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# THE LAW MAGAZINE) (AND) (REVIEW,

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## I.—SOME RESULTS OF THE BENGAL TENANCY ACT.

THE world has recently been startled by the discovery of gigantic frauds which spread ruin and desolation in the midst of thrifty and industrious communities. The doings of the Liberator Society, the Panama Canal Company, and certain banks and Trust institutions, are still fresh in the memory of the public; and it may be remembered that, in some of the criminal transactions referred to, officials of high rank, members of the Legislature, and even members of the Government were found to have participated. The Government itself, however, not having been implicated in any instance, was able to exercise its powers for bringing the guilty to justice, and thereby restoring public confidence. But when an unfair scheme emanates from a Government, and that Government is vested with extraordinary Legislative and Judicial powers, which enable it to give the force of Law to its arbitrary determinations, and to sit in judgment over its own acts, the Constitutional forces of society, intended for the repression of wrong-doing, become paralysed or mis-directed; and national ruin and degradation are the inevitable results. Rebellion, in such circumstances, has almost invariably been the outcome of popular suffering and discontent; but rebellion against an autocratic Government, supported by a strong military force, must,

for a time, aggravate the public calamity, whatever reforms might ultimately ensue for the benefit of future generations.

- These reflections are suggested by a Government land scheme, introduced into Bengal in 1885, and which threatens to compass the ruin of the wealthiest province in our Indian Empire. Fragmentary information on the subject has now and then appeared in telegrams from India; but a complete and just apprehension of the measure—of its objects and probable results—can be arrived at only through a retrospect into the administrative history of the province.

When the battle of Plassy, in 1757, wrested Bengal from its Mahomedan conquerors, the country had been greatly impoverished by the rapacity of the invaders; and agriculture, which constituted its chief industry, was depressed to a very low condition. The British, on their accession to power, imposed upon land a tax equal to ten-elevenths of its rental, and reserved the right of enhancing their assessment every ten years, wherever the land should meanwhile have been improved, either by clearances and extended cultivation or otherwise. It will at once be seen that no stronger discouragement could have been offered to industry and to the employment of capital in agricultural enterprise than the uncertainty thus introduced into the prospective demands of the Government; and this circumstance will, doubtless, in a great measure, account for the state of stagnation in which the country remained for nearly half a century after it came under British rule. The Governor-General wrote on the 18th September, 1783 :—

“I may safely assert that one-third of the Company's territory is now jungle inhabited only by wild beasts. Will a ten years' lease induce any proprietor to clear that jungle and encourage ryots to come and cultivate his lands when, at the end of that lease, he must either submit to be taxed

*ad libitum* for the newly cultivated lands or lose all hopes of deriving any benefit from his labours, for which, perhaps, by that time, he will hardly be repaid ? ”

A proposal was then submitted by the Governor-General for fixing the land-tax in perpetuity, as a measure calculated to encourage agriculture, lead to the production and accumulation of national wealth, and inspire the people with loyalty and attachment to their new rulers. The proposal was carefully considered for several years, both in India and in England ; Mr. Pitt brought his powerful mind to bear on the subject ; and after an exhaustive debate in Parliament, the proposed measure was sanctioned in 1792, and the requisite declarations were promulgated in Bengal on the first day of the following year. Regulation I. contains the following assurance :—

“ The Governor-General trusts that the proprietors of land, sensible of the benefits conferred upon them by the public assessment being fixed for ever, will exert themselves in the cultivation of their lands, under the certainty that they will enjoy exclusively the fruit of their own good management and industry.”

The Preamble to Regulation II. gave the following pledges for the due performance of the compact then concluded between the British Government and the proprietors of land in Bengal :—

“ All questions between Government and the landholders respecting the assessment and collection of the public revenue, and disputed claims between the latter and their ryots, have been cognizable in the Courts of Maal Adawlut or Revenue Courts. The Collectors of revenue preside in the Courts as judges, and an appeal lies from their decision to the Board of Revenue, and from the decrees of that Board to the Governor-General in Council in the department of revenue. The proprietors can never consider the privileges which have been conferred upon them as secure, whilst the



revenue officers are vested with these judicial powers. Exclusive of the objection arising to these Courts from their irregular, summary, and often *ex parte* proceedings, and from the Collectors being obliged to suspend the exercise of their judicial functions whenever they interfere with their financial duties, it is obvious that, if the Regulations for assessing and collecting the public revenue are infringed, the revenue officers themselves must be the aggressors, and that individuals who have been wronged by them in one capacity can never hope to obtain redress from them in another. Their financial occupations equally disqualify them for administering the laws between the proprietors of land and their tenants. Other security, therefore, must be given to landed property, and to the rights attached to it, before the desired improvements in agriculture can be expected to be effected. Government must divest itself of the power of infringing in its executive capacity, the rights and privileges which, as exercising the legislative authority, it has conferred on the landholders. The revenue officers must be deprived of their judicial powers. All financial claims of the public, when disputed under the Regulations, must be submitted to the cognizance of Courts of judicature superintended by judges who, from their official situations and the nature of their trusts, shall not only be wholly uninterested in the result of their decisions, but bound to decide impartially between the public and the proprietors of land, and also between the latter and their tenants. The Collectors of revenue must not only be divested of the power of deciding upon their own acts, but rendered amenable for them to the Courts of judicature, and collect the public dues subject to a personal prosecution for every exaction exceeding the amount which they are authorised to demand on behalf of the public, and for every deviation from the Regulations prescribed for the collection of it. No power will then exist in the country

by which the rights vested in the landholders by the Regulations can be infringed, or the value of landed property affected. Land must in consequence become the most desirable of all property, and the industry of the people will be directed towards those improvements in agriculture which are as essential to their own welfare as to the prosperity of the State."

The land-tax under the Permanent Settlement having been maintained at the excessive rate which had previously been imposed—but could never be realised—the landowners were, at first, unable to collect sufficient amounts of rent for the due discharge of the Government demand; and those among them who possessed no other means but their lands, lost their estates under a clause in the new Regulations which rendered land liable to attachment and sale for arrears, when the revenue was not brought in on the day fixed for its discharge. Notwithstanding this unfortunate circumstance, the national prosperity looked for by the authors of the Permanent Settlement, was fully realised. Under the protection afforded by the Regulations of 1793, industry and capital converted the jungles of Bengal into an almost uninterrupted field of cultivation; and while the land-tax in the province has ever since been collected with a regularity unknown in the rest of British India, new sources of revenue far exceeding the land-tax itself have sprung from the wealth produced by agriculture under the operation of the Permanent Settlement.

"The Bengal of to-day offers a startling contrast to the Bengal of 1793; the wealth and prosperity of the country have marvellously increased—increased beyond precedent—under the Permanent Settlement. A great portion of this increase is due to the zemindari body as a whole, and they have been very active and powerful factors in the development of this prosperity." (See *Burdwan Commissioner's Report, Gazette of India*, 20th October, 1883.)

Meanwhile, the expenditure of the Government of India, under the irresponsible system of administration inaugurated in 1858, increased by nearly twenty millions a year—viz., from 34½ millions in 1856-57 to 53½ millions in 1869-70; and among the many projects formed for increasing the revenue, a proposal was entertained to confiscate the wealth produced under the Permanent Settlement Regulations, through additional burdens to be imposed on land, in violation of the pledge given in 1793. This dishonest proposal met, however, with strong opposition from the officials in India, through whose instrumentality it was to be executed; and when the Indian Secretary of State sought the support of his Council in the matter, he was told by one of its members: "We have no standing ground in India except brute force, if we forfeit our character for truth."

In short, the condemnation of the scheme by Anglo-Indian officials, both in India and in England, rendered an overt repudiation of public faith impracticable at the time.

But the unfair project was not abandoned; covert and tortuous ways were resorted to for its accomplishment; and the conspiracy (if it may so be called) was prosecuted with an ingenuity and a perseverance worthy of a better cause. The first step was to destroy the safeguards which had been provided for the due performance of the compact of 1793. To this end the independent Law Courts then established were undermined and weakened; and the condemned system of vesting Revenue officers with Judicial powers was revived, although its pernicious effects had been clearly demonstrated in the Preamble of Regulation II. The next step was to put such a construction on the compact of 1793 as would justify the Government in altering its conditions. After these preliminary steps, the object of the scheme—namely, increased revenue from permanently settled land—was to be gained through a

Legislative enactment which should (1st) deprive landowners of their power to enhance rents, (2nd) create middlemen entitled to fixity of rent, but empowered to rack-rent their sub-tenants the cultivators; and (3rd) perpetuate these conditions by annulling the validity of contracts, empowering the middlemen to sell their holdings with the privilege of fixed rents, and debarring landowners, who might purchase such holdings, from either extinguishing the right to the said privilege, or adding the land to their home farms. By these provisions the middlemen would be placed in a position to absorb the bulk of the profit yielded by the land, and the ultimate object of the scheme could be attained through taxation imposed upon them. Not being a party to the Permanent Settlement, these middlemen would not have the right which the landowners possess, of claiming exemption, under that compact, from further taxation on profits derived from land.

A pretext for initiating the necessary legislation was found in a long-standing complaint, that the defective state of the law subjected landowners to undue delays and expense in the recovery of rents. On pretence of remedying that evil, the Government introduced a Bill in 1878, with the following statement in justification of the step:—

“Notwithstanding the fact that in about 75 per cent. of the suits for arrears of rent the claim is really not contested, the landowners have often found themselves unable to recover their just dues, without submitting to a process which entails costs that may never be recovered, and delays that are frequently embarrassing and ruinous. . . . If they cannot recover their dues easily and effectually from their tenants they must under penalty pay the amount themselves—a position which the State is obviously bound to render as little burdensome as possible.”

This Bill was soon afterwards withdrawn, upon the plea that as the law on Rent seemed to require revision it was

advisable to deal with both subjects in one Bill. No one, however, had asked for a revision of the law on Rent, and the plea thus adduced for dropping a measure of acknowledged urgency naturally created misgivings in the public mind as to the real intentions of the Government. Regardless of this feeling the Government appointed a "Rent Commission," composed almost exclusively of its own officers, who, without examining the parties concerned, drafted a complicated Bill of some 230 sections, besides schedules and appendices, the nature of which was subsequently exposed in the reports of twenty-one Revenue and Judicial officers who were consulted on the subject. Of these voluminous Reports only small extracts from a few can find room here; but these will suffice to show the unprincipled character of the measure, and a striking contrast between the spirit of unfairness and duplicity which inspired the Bill, and the sound views of its official critics.

"If the definitions of tenure-holder and ryot are maintained, the conventional meaning of the word 'ryot,' the nearest equivalent of which is 'yeoman,' will disappear, as will indeed the class itself; for the inevitable tendency of the proposed law is to make *right-of-occupancy ryots*, in fact, as well as in name, middlemen. The definition of tenure-holder should be altered to signify exclusively a middleman between a proprietor and a ryot. You cannot alter the conventional meaning of words by Act of Parliament. Chapter VI. provides for the drawing up of a local table of rates of rents and produce. I believe that it will be practically impossible to draw up such tables. Chapter XI. introduces a state of things which the Preamble of Regulation II. of 1793 stated was found unsatisfactory." (J. P. Grant, District Judge of Hoogly.)

"Ever since 1793 we have allowed men to buy estates and tenures in the belief, fully justified by our action, that

no interference would take place, and it is not fair to those persons suddenly to uproot the conditions on the faith of which they have invested their money. The definition of ryot has purposely been left obscure. Sects. 14 and 15 turn an occupancy ryot into a tenure-holder. This is said to have been done for the convenience of the draftsman. It is a matter of no moment whether he finds an Act easy or difficult to draft; that should not occupy the mind of the legislator, whose attention should be directed solely to the justice and utility of the law. It is stated that the procedure under Chapter XI. has been invented with a view to removing from the Civil Courts the power of reversing the decisions of revenue officers. I do not see how this is to be reconciled with the Preamble of Regulation II. of 1793." (J. Beames, Commissioner, Burdwan Division.)

"As to the voidance of contracts, the proposed law appears to introduce a dangerous precedent. The law is held to override contracts entered into with deliberation, and this without any inquiry whether the contract was voluntary or not. Sect. 73 says that a contract, in a certain case, made in favour of a ryot, must be enforced, while sect. 50 protects him from contracts which are against him. Sect. 74 enforces a contract which is against a landowner, while sects. 87 and 90 repudiate contracts which are in his favour. These instances teach the ryots that there is no moral obligation in promises." (E. E. Lewis, Commissioner, Chittagong Division.)

"The survey and register under sect. 7 will, I believe, be a work of enormous difficulty. Every plot will be disputed, and there will be in effect a civil suit contested in every stage before the Survey officer, the Commissioner, the Board, and the Government. It seems to me to be more expedient to allow each case to be settled by the Courts on its own merits, in case of dispute, than to cause a widespread discord by sending a roving Commission about the

country to agitate questions in which the parties concerned are themselves quiescent. I have received some strong representations as to the delay which will be caused to the landlord by his not being allowed to eject any occupancy ryot for arrears of rent. This is one of the points where the landowner, asking for bread, has been given a stone." (R. Towers, District Judge, Tipperah.)

"I cannot consider the provisions of the Bill as fair to the landowners with reference to the rights which they have enjoyed for a century; and yet I am precluded from calling into question the principles upon which the Bill is founded. As to the abolition of freedom of contract, I altogether fail to see the justice of the provision. I find nothing of the kind in any of the Permanent Settlement Regulations. The ryot is to be allowed freedom in every respect, except when he enters into an agreement with his landlord. If this is not setting class against class and teaching the ryot to look upon the landlord as his natural enemy, words have no meaning. With regard to the ordinary ryots, the provisions of the Bill militate against all previous practice, by which a tenant-at-will was allowed to hold in accordance with agreement entered into between him and his landlord. I am not prepared to support those provisions which fix a maximum of rent to be demanded. As to the provisions for the recovery of rents, which were the beginning of the legislation which has found its outcome in the present Bill, I am afraid that the landlords will hardly be satisfied with the relief which has been given them. *On the principle on which this Bill is drawn,\** the landowners could not expect further relief. I suspect, however, that they expected, and I am not prepared to say that they had not a good right to expect, very much more substantial relief, as the outcome of their application

\* Mr. Monro may have underlined these words in order to convey the opinion that the object of the Bill was, not to relieve, but to despoil the owners of land.

for a summary method of realising rents." (J. Monro, Commissioner, Presidency Division.)

"I think the sub-letting power given to *Occupancy ryots* a doubtful and dangerous part of the Bill. A long string of rent-payers and receivers must be bad. As far as an *Occupancy ryot* is a rent receiver, he is one of the objectionable class of land-jobbers. The net result of the Bill will be the extinction of the present class of [cultivating] *Occupancy ryots*, and the transfer of their rights to money-lenders. We think the preparation of a table of rates impracticable. The Conference is unanimous in saying that the freedom of contract should not be withheld." (F. M. Halliday, Commissioner, Patna Division, in Conference.)

"The right of occupancy is for the protection of the cultivator; it seems inequitable, therefore, to allow a non-cultivator to be thrust on the proprietor as an *Occupancy ryot*. If a ryot is evicted from a holding in default of payment of rent, there is nothing in this sect. 129 to prevent his demanding compensation." (N. S. Alexander, Commissioner, Dacca Division.)

"It has been asserted that one of the objects of the present legislation is to afford facilities to the landlord for the recovery of his rent, whereas there can be but little doubt that the recovery of rent has been made more difficult than it previously was. Sect. 50, when enacted, will lead to a very general loss of right of *Occupancy* holdings by the present generation of ryots, whose holdings will be at once bought up by the money-lending classes, the ryots becoming rack-rented pauper-cottiers or landless labourers." (G. N. Barlow, Commissioner, Bhagalpore Division, in Conference.)

"The principle involved in sect. 47 seems almost a ludicrous way of making out an *Occupancy* right. There is to be a perfect transformation scene on a day yet to be



fixed. On that day villagers, who may be merely tenants-at-will and may never have held one piece of land for more than three days at a time, will suddenly become ryots with rights of Occupancy in the plot last held, all contracts to the contrary notwithstanding. This renders all contracts under Act VIII. of 1869 mere waste paper. I cannot think that circumstances justify such flagrant infringement of the landowners' rights. Sect. 50 bestows valuable privileges on the ryot; would it be too much to ask that one provision be added on behalf of the man at whose expense we are generous? viz., that the Occupancy right be liable to be revoked for non-payment of the 'fair and equitable rent' on the due date? If rents are no longer to be fixed by consent, but by a table of rates, how is such a table to be prepared? It pre-supposes a certain dead level in the out-turn of lands, as if improvement and industry were of no account." (C. A. Samuells, Collector of Bankura.)

"If this Bill is intended to protect ryots, I fail to see why it should allow sub-letting. A ryot ceases to be a ryot when he ceases to cultivate, and when he sub-lets, he becomes the most oppressive of landlords, a petty middleman." (H. Mosley, Collector of Moorsheadabad.)

"Constant changes in legislation are greatly to be deprecated. In the present instance I do not think that any such necessity has arisen." (E. J. Barton, Collector of Jessore.)

"The Bill proposes to effect a violent revolution in the ownership of landed property, affecting the interests of above fifty-five millions of people. Such important changes, affecting detrimentally the rights and interests of a large and important class, should only be made on very strong grounds; such as, for instance, the grounds advanced by Mr. Gladstone when introducing a somewhat similar measure in Ireland in 1870. The result in that case might well make thinking men pause before introducing it into

another country, even if the circumstances under which the Irish measure was applied existed here. No special or strong grounds, political or other, exist in the present case, nor have any been asserted in support of the present Bill. In 1877, the Lieutenant-Governor thought special legislation was necessary to enable the zemindars to recover their rents. Matters have in no way changed since then. There has been no general feeling of discontent among the ryots. I am sure that all the Government officers will agree in this, and in thinking that the ryots of Bengal are, as a body, in a contented, prosperous condition; nor will it be denied that there has been no general request on the part of the ryots for such legislation as is now proposed. It is clear, then, that the present measure is proposed, not because it is necessary, but because, in the opinion of the Government, the land system of the Bill is preferable to the existing one. It seems to me that the passing of such a Bill would not be justified by the circumstances, and that even if there were no other objections it would not be right to pass it. But there are other and, in my opinion, serious objections to the Bill. First, it is an infringement of the rights guaranteed by the Permanent Settlement. I do not forget that the Settlement allows Government to interfere for the welfare and protection of the ryot. But if it had been intended that such interference should have amounted to the destruction of the proprietary rights then conferred, such rights would never have been conferred, and I request reference to paragraph 11 of this letter, as it can scarcely be alleged that interference is necessary in the slightest degree for the protection of the ryots. Next, we have for 90 years treated the zemindars as real proprietors, making them discharge the duties of proprietors, in regard to matters connected with police, crime, furnishing supplies to troops on the march, and, above all, the collection of public demands. Is it fair or just to deprive them now of the most important rights of a pro-

prietor?" (Lord H. Ulick Browne, Commissioner of the Rajshahye and Cooch Behar Division.)

- The undisguised opposition of these officials (whose advancement in the Service so greatly depended on the good-will of the Government) testifies to the indignation which they must have felt at being expected to co-operate in a scheme of injustice and oppression. Lord Ulick Browne was charged at the time by the Lieutenant-Governor, in a despatch addressed to the Government of India, with having, when consulting his subordinates on the Tenancy Bill, made comments which amounted to "prejudging the issues which they were called to consider." But the Lieutenant-Governor had laid himself open to a similar charge in paragraphs 5, 6, 7, and 8 of his Circular calling on the district or superior officers for their opinions on the same Bill; and the omission of those paragraphs in the copy published in the official *Gazette* would tend to show that His Honour was not unconscious of their exceptional character.

When the Bill was submitted for the Secretary of State's sanction, the following objection was raised by the Council of India, and stated in Lord Hartington's despatch of 17th August, 1882:—

"Your proposal in the first place annuls the distinction deeply rooted in the feelings and custom of the people between the resident and permanent and the non-resident or temporary cultivator. This, when your avowed intention is to restore to the ryots their ancient position and rights, appears to me anomalous and undesirable. In the next place, it abandons a principle on which the Statute law has been based for nearly a quarter of a century, and which was adopted in 1859 by the Legislature on rational and intelligible grounds."

• The Bill was also submitted for the opinion of the High Court of Bengal, and the Chief Justice's Minute of

6th September, 1882, of which the following is an extract, exposes its character from a legal point of view:—

“I find that some pains have been expended upon the argument that the Government, in case of necessity, has a right to interfere with vested interests, although created by so solemn a compact as that of the Permanent Settlement; and it has been further argued that in the Settlement itself the Government has expressly reserved such a power of interference. For my own part, I consider the argument quite superfluous. I take it to be clear that any Government, *in case of real emergency*, has a right, so far as it is necessary, to interfere with vested rights to whomsoever they may belong, and howsoever they may have been created. But then I take it to be equally clear that, *without some such actual necessity*, no Government is justified in interfering with the vested interests of any class of its subjects; more especially when those interests have been created and defined, after due consideration, by the State's own legislative enactments.

“The true question for our present purpose is whether there does or does not exist at the present time any such necessity as justifies the Government in depriving the landlords of Bengal of their rights and privileges in the manner proposed by the Bill. For myself I see no such necessity, and I am bound to say that, amongst the many complaints on behalf of the ryots, which have been published by the Government in connection with this subject, I have been unable to find a single statement that the ryots themselves desired anything of the kind.

“The deprivation to which I allude, was never, so far as I can ascertain, even suggested by the ryots. It was proposed for the first time by certain members of the Rent Commission; and it is supported, as I understand, not upon the ground of actual necessity, but because, in the opinion of those gentlemen, the ryots were, or ought to

have been, in a better position some ninety years ago than they are now; and that it is desirable, in the interests of the State, to place them in that position."

Sir Richard Garth, after fully discussing the other provisions of the proposed Law, concluded his Minute in the following terms :—

"For the present my task is done. I trust that, with some of my countrymen at any rate, the humble but earnest effort that I have made to protect the landlords in Bengal from what appears to me nothing short of impending ruin, may find some support and sympathy. I trust that the landlords themselves may be awakened in time to their own danger; and I hope and pray that the policy of confiscation—which has borne, and is bearing still such terrible fruit in Ireland—may be averted by the blessing of God from our Indian possessions."

These condemnatory opinions, expressed by some of the highest authorities, led to the Bill being kept back for upwards of two years. Meanwhile the ryots perceived that the proposed legislation, while it deprived the landowners of their proprietary rights, also destroyed the protection which the ryots enjoyed against the undue enhancement of their rents. The subject was then carefully discussed by ryots all over the country, and numerous petitions came from them, earnestly praying the Government that the Bill might not be passed. The prayer was unheeded, but the matter continued to be kept in view, though the Bill was seemingly dormant.

In 1885, the change of Ministry, and the increased excitement over the Irish Home Rule question, which engrossed public attention at home, seemed to offer a favourable opportunity to the Government for carrying the Bengal Tenancy Bill through its final stages, and the Legislative Council was accordingly summoned for the purpose. "On that occasion a non-official member, the

Maharaja of Darbhanga, after once more pointing to the evil tendencies of the measure, concluded his speech in the following words:—

“I have at any rate the satisfaction of feeling that I have acted as the true friend of my country and of the Government in warning you of the political dangers which, I believe, underlie the proposed legislation.”

Another non-official member, Baboo Pearymohun Mookerjee, said:—

“I deem it my duty to entreat your Lordship and this Honourable Council to pause before passing this Bill. It has been observed by a high authority, Jeremy Bentham, that ‘the legislator is not the master of the disposition of the human heart; he is only its interpreter and its minister. The goodness of the laws depends on their conformity to general expectation. The legislator ought to be well acquainted with the progress of that expectation in order to act in concert with it.’ Allow me, my Lord, to ask: Has the Bengal Tenancy Bill satisfied the expectations of either the landlords or the ryots? The resolutions passed at the meetings held in different parts of these provinces, the numerous memorials which have been submitted to your Lordship by landlords and ryots alike, and the public opinion which has found expression in every section of the native and Anglo-Indian press, give an emphatic answer to the query. The landlords stand aghast at the dreadful vista of unmerited loss which the measure threatens them with. The ryots loudly express their consternation at the operation of a law said to have been conceived for their benefit, but which they firmly believe will make their position much worse than it is at present. I appreciate the desire of the member in charge of the Bill that there should be a finality at some stage of these discussions; but the passing of a measure which is disliked by all classes is not likely to allay the agitation which discussions regarding

it have given rise to. Let us not cry peace where there is no peace. In questions of such magnitude, complexity, and importance, where every word and sentence we seek to clothe with the authority of the law may be fraught with the gravest consequences to millions of unrepresented subjects of Her Gracious Majesty, it can never be unwise to pause and take a forecast of the future. A question which I beg your lordship and this Council to consider is whether it is desirable to pass without further inquiry and deliberation a measure which, it has been publicly said, would shake the confidence of the people in the faith of the British nation, and which would set brooding over their wrongs a large and important section of the community who are noted for their loyalty and devotion to the British Crown."

The Viceroy's speech, which ended the debate, sounds like a derision or an insult to human intellect in its description of a measure which violates every dictate of justice and humanity, and aims simply at spoliation. His Excellency said:—

"I believe that the Bill is a translation and reproduction, in the language of the day, of the spirit and essence of Lord Cornwallis's Settlement; that it is in harmony with his intention, and is conceived in the same beneficent and generous spirit which actuated the framers of the Regulations of 1793."

It seems incredible that these words could have been uttered with any feeling of sincerity. But what right have we to expect a sincere expression of opinion from any official member of the Indian Legislative Council, when we know that the members of that body are not free agents, but are bound, irrespective of their personal feelings and opinions, to act in obedience to the instructions transmitted by the India Office? Has not the Indian Secretary of State, in his despatch of 24th November, 1870,

distinctly intimated to the Governor-General of India in Council, that "the British Government must hold in its hands the power of requiring the Governor-General to introduce a measure, and of requiring also all the members of his Government to vote for it?" Under these conditions the Bengal Tenancy Bill could not have been passed without the sanction of the Secretary of State for India; and the responsibility of the measure must, therefore, attach solely to that Cabinet Minister. But is that Cabinet Minister himself a free agent as regards the administration of India? Is he at liberty to sanction a measure calculated to benefit the Indian people, or to abstain from a course injurious to them, when his colleagues in the Cabinet are opposed to the former or insist on his adopting the latter? Can he, moreover, reasonably be expected to withstand the influence of the British Constituencies on whose support his existence as a Minister, and the strength and safety of the Cabinet of which he is a member entirely depend? If these questions are to be answered in the negative, how are the Indian people, upon whom an irresponsible system of government has been imposed, to be protected either from a dishonest Executive, or from the exigencies of British Constituencies, when these are opposed to the interests of India?

Considering the constitution of the Indian Legislature, it will be easily understood that the Bengal Tenancy Bill, notwithstanding its flagrantly iniquitous character, was passed without the least hesitation by the standing official majority of the Council; and although eight years have since elapsed the Government have been unable, as yet, completely to carry out its provisions. The ryots, as a body, having shewn disinclination to accept the insidious privileges offered to them, the Government are preparing to execute forcibly the Cadastral Survey which is to enable their officers to construct a record-of-rights on the arbitrary lines laid down in



the Act, and to draw up the table of rates on which rents are to be based. Meanwhile landed property has been considerably depreciated under the Confiscatory Clauses of the measure; and the increased difficulty it has introduced in the recovery of rents, has placed a large number of proprietors in the impossibility of satisfying the Revenue demand on the due date. Sales for arrears have, in consequence, increased ever since the Bill was introduced. In 1882 and 1883 the estates and shares of estates attached by the Revenue officers amounted to 9,735 and 10,789 respectively; and the Calcutta *Englishman* of 1st December, 1893, states, in reviewing the latest Administration Report of Bengal:—

“Nearly 17,000 estates and shares of estates became liable for sale for non-payment of the Government demand last year. Forty-three estates were bought by the Government for the nominal sum of 54 rupees.”

Thus, one of the noteworthy results of the legislation, which was avowedly introduced for the assistance of landowners in the recovery of rent, has been to deprive thousands of them of their estates, and to destroy the confidence of the people in the good faith and good intentions of their rulers. The ultimate effect of the *Bengal Tenancy Act*, when fully enforced, must be to create strife and litigation, to extinguish the spirit of peaceful industry so marvellously evoked by the wise legislation of 1793, and to drive an impoverished people to lawless modes of subsistence.

J. DACOSTA.

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## II.—THE JURISDICTION TO ENTERTAIN ACTIONS FOR TRESPASS TO LANDS SITUATED ABROAD.

THE point which was decided in the United States in the case of *Livingstone v. Jefferson* (1 Brockenburgh, 203) has been recently, under an altered state of the law, the subject of Judicial decision in the superior tribunals and the ultimate Court of Appeal in England.

In the case of *Livingstone v. Jefferson* the question was whether the United States Circuit Court for Virginia could take cognizance of a trespass to lands situate beyond the district as against a resident of Virginia, and, in the course of his Judgment, Chief Justice Marshall (with the Hon. St. George Tucker) said :—" It is admitted that on a contract respecting lands an action is sustainable wherever the defendant may be found. Yet in such a case every difficulty may occur which presents itself in an action of trespass. An investigation of title may become necessary, a question of boundary may arise, and a survey may be necessary to the full merits of the cause. Yet these difficulties have not prevailed against the jurisdiction of the Court. They are countervailed, and more than countervailed, by the opposing consideration, that if the action be disallowed, the injured party may have a clear right without a remedy, in a case where a person who has done the wrong, and who ought to make the compensation, is within the jurisdiction of the Court." That this consideration should lose its influence where the action pursues a thing not in reach of the Court is of inevitable necessity ; but for the loss of its influence where the remedy is against the person, and is within the power of the Court, I have not yet discerned a reason other than a technical one which can satisfy my judgment." The

Chief Justice, accordingly, ruled in this case that in an action for trespass to land the venue was local, and that the action must be brought in the State where the land lay. In *Whittaker v. Forbes* (L.R. 1 C.P.D. 51),\* which was an action commenced in England previously to the coming into operation of the Judicature Act abolishing (subject to slight exceptions) local venues, but tried after that Act, for arrears of rent-charge on lands in Australia, Lord Bramwell, then Mr. Baron Bramwell, expressed his approval of the Judgment of Marshall, C.J., in *Livingstone v. Jefferson* (at p. 53).

Before entering upon the consideration of the Municipal Law relative to this subject, it is desirable to refer to the International aspect of the question. According to a recent writer in the *Law Journal*, Vol. XXVIII., p. 670, "The International responsibility of the British Government for acts of the chartered companies is complete. Every act of administration by the companies or their agents giving rise for cause for complaint by any European Power, or by any Power in fact independent, is an act for which the British Government which granted the charter is internationally responsible. The acts of the company were acts of State, and, as Lord Thurlow puts it, '*Ex tali facto non oritur actio.*'" *The Nabob of Arcot v. The East India Company* (3 Brown's Reports G.C. 291; 4 Brown's C.C. 180; 2 Ves. Jun. 56), in which case the Court of Chancery refused to entertain a suit arising out of transactions of State between sovereign powers, though the defendants were subjects of the English Crown. This International liability is referred to by Wright, J., in delivering the Judgment of the Queen's Bench Divisional Court in the recent actions brought against the British South Africa Company in the following terms (66 L.T. Rep. N.S. 782):—"The charter of the defendant company and its treaties with the native chiefs are not before the Court, but if, as in the case of the East India

Company, the defendants are authorised by their charter to make treaties of a political character with native chiefs and to acquire sovereign rights within the territories of those chiefs, and if the defendants have made such treaties and acquired such rights, and if the defendants have done the acts complained of in their own character as a sovereign power under such a charter or treaties, then their own acts may have been of the character of acts of State, and not examinable in any municipal court, according to the principles recognised by Lord Thurlow and Chief Baron Eyre in the case of the *Nabob of Arcot* (*sup.*). If that were made out by the defendants the plaintiffs would not be without remedy, but the remedy would not be legal, but diplomatic, and redress might be sought by Portugal on behalf of the plaintiffs from the Crown of England." The maxim *respondeat superior* seems to apply, as pointed out in *Dobree v. Napier* (2 N.C. 781; 1 Sm. L.C. 714, ed. 7).

To pass from the International side of the subject to the question as affected by Private International and Municipal Law, it may be stated that the former received exhaustive consideration founded upon Story's *Conflict of Laws* in the Judgment of Lord Esher, M.R. (reported 40 W.R. pp. 652, 653), the latter in those of Lord Justice Fry (*ib.*, pp. 655, 656), and the Lord Chancellor (L.R. [1893] A.C. 617, 618, 619). It has also, it may be mentioned, recently received Judicial consideration in Ireland (where the rules as to venue appear not to have received alteration similar to that which has taken place in England) in the case of *McConchy v. Madden* (28 L. Rep. Ir. Com. Law Div. 338). The Master of the Rolls, after pointing out (40 W.R. 652) that with regard to acts done within the territory of a nation all are agreed that such nation has, without more, jurisdiction to determine the resulting rights growing out of those acts; and noticing the general jurisdiction as to personal property, the jurisdiction being prior to any rule of venue made with regard to

the method of exercising the jurisdiction, proceeds to the consideration of the question whether a similar jurisdiction has been given by inter-municipal law, in respect of real or immovable property. "The law of the *situs*," his Lordship is reported to have said (40 W.R. 653), "governs all rights in and to land. One right to land is the right that a stranger shall not enter upon it against the consent of the owner. In sects. 551, 552, Story further states the opinions of the foreign jurists; and finally in sect. 554, he states what in his opinion is the law of England—the common law of England. 'It will be perceived that in many respects the doctrine laid down coincides with that of the common law. It has been already stated that by the common law, personal actions, being transitory, may be brought in any place where the party defendant can be found; that real actions must be brought in the *forum rei sita*, and that mixed actions are properly referable to the same jurisdiction. Among the latter are actions for trespasses and injuries to real property which are deemed local, so that they will not lie elsewhere than in the place *rei sita*'" (sect. 554). Again (at p. 653) "the municipal rules of procedure are not to be considered until the question of jurisdiction is determined." "If by express legislation the Courts are directed to exercise jurisdiction, the Courts must obey. If there is a proper inference to the same effect the result is the same" (40 W.R. 652). With respect to the division of actions into those of a local and transitory nature, and the cognate but now, in England, historical rules as to venue, Lord Justice Fry, referring to the growth of the jurisdiction of the Common Law Courts, formerly limited by competing jurisdictions, within the realm, and laying down that it would be hardly wrong to assert that the Courts of this country have jurisdiction in every case in which they ought to have jurisdiction, is reported to have said (40 W.R. 655, commented on, L.R.

[1893] A.C. 633, 634): "So long as all actions were local, it is obvious that no action, whether it related to matters personal or to immovable property, in which the cause of action arose beyond the jurisdiction of some county could possibly be tried in any Court in England. When the distinction arose between local and transitory actions, and the further step was taken of allowing transitory actions where the cause arose out of England, and such actions only to be tried within the jurisdiction, trespass *quare clausum fregit* was held to be a local action, and consequently such an action in respect of land abroad could never be tried in any Court of the nation." With regard to the development of the law which determined the venue or place of trial of issues of fact, it appears that when the practice of drawing the jury from the particular town, parish, or hamlet where the fact in issue took place—that is from amongst those who were supposed to be cognisant of the circumstances—ceased, and they came to be drawn from the body of the county generally, and to be bound to determine the issues judicially after hearing witnesses, the law began to discriminate between cases in which the truth of the venue was material, and those in which it was not so. This gave rise to the distinction between local and transitory actions, that is, between those in which the facts relied on as the foundation of the plaintiff's case have no necessary connection with a particular locality and those in which there is such a connection. In the latter class of actions, the plaintiff was bound to lay the venue truly; in the former, he might lay it in any county he pleased. Local matters arising out of the realm might be tried by a jury from the venue in the action with a *scilicet* of that venue (L.R. [1893] A.C. 632). "The distinction between local and transitory actions depended on the nature of the matters involved, and not on the place at which the trial had to take place." It was not called a

local action because the venue was local, or a transitory action because the venue might be laid in any county, but the venue was local or transitory according as the action was local or transitory." *Per* Lord Herschell, L.C. (L.R. [1893] A.C., at p. 619).

To pass to the consideration of the recent cases in the English Courts. In that of *The Companhia de Moçambique v. The British South Africa Company* (66 L.T. Rep. N.S. 782; in *dom. proc.* L.R. [1893] A.C. 617) the plaintiffs alleged themselves to be interested in lands in Africa of two kinds—the one lands situated within territories acquired by Portugal and granted by that State to the plaintiffs, the other by grants from native chiefs; they relied on title as regards both these kinds of land, and they also, and alternatively, relied on the fact of possession; they alleged acts of trespass committed on these lands, and they further alleged that there was no competent tribunal having jurisdiction to adjudicate on their claims in the country where the acts complained of were committed. The relief which the plaintiffs had sought, so far as it related in any way to the land, may conveniently be divided into four parts (*per* Fry, L.J., 40 W.R. 655):—Firstly, a declaration of their title; secondly, an injunction to support and give effect to that declaration; thirdly, damages for trespass to the land; and fourthly, an injunction to prevent further trespass. The most important question in the Queen's Bench Divisional Court was, whether the Court could entertain jurisdiction to make a declaration of title to foreign lands. This point was abandoned before, or not pressed upon, the Court of Appeal, where the question was, could the Court, now that there is, by R.S.C., Ord. 36, r. 1, no local venue for the trial of any action, entertain jurisdiction in an action brought against a person resident in England for damages for trespass to land situate out of England in a place where

there is no Court of competent jurisdiction? In the allied case of *De Sousa v. The British South Africa Company* (66 L.T. Rep. N.S. 782), the plaintiff, the Governor of the Portuguese provinces in South Africa, alleged wrongful acts of trespass on the part of the defendants similar to those in the above action, and claimed damages and an injunction: the defence set up being that De Sousa was wrongfully upholding the claim of the Portuguese Companhia in the first mentioned action. If it had not been treated as subsidiary to the first action, De Sousa's action would probably have been successful. (*Scott v. Seymour*, 10 W.R. 739; *The Halley*, 16 W.R. 284; L.R. 2 P.C. 93.)

Before entering upon an examination of the state of the authorities upon the questions involved in these cases, it may be well to state what constituted the cardinal difference in the law under which they were decided and that in existence at the time when kindred points had been before the Courts. In accordance with the recommendation of the Judicature Commissioners, by R.S.C., Ord. 36, r. 1, "There shall be no local venue for the trial of any action, except where otherwise provided by statute."

The plaintiffs in the recent cases alleged that jurisdiction to entertain actions similar in character to those which they brought had been inherent in the English Courts, but were unable to point to any unquestioned instance of its exercise; this disability arose, it was on their behalf asserted, from what has been described as the "technical fetter" of venue, the nature of which has been above shortly sketched. In support of this view the Chancery cases, of which *Penn v. Lord Baltimore* (1 Ves. Sen., 444) is a leading instance, were cited. In that case, heard in 1750, a Bill had been filed for specific performance and execution of articles entered into in England with respect to the boundaries of two provinces in America, the



defendant being within the jurisdiction, and the Court granted a decree for specific performance (Belt's Supplement to Ves. Sen., 206):—Lord Hardwicke saying, "As to the Court's not enforcing the execution of their Judgment, if they could not at all I agree that it would be vain to make a decree, and that the Court cannot enforce their own decree *in rem* in the present case. But that is not an objection to making a decree in the cause; for the strict primary decree in this Court, as a Court of Equity is *in personam*, long before it was settled whether this Court could issue to put into possession in a suit of lands in England, which was first begun and settled in the time of James I., but ever since done by injunction or writ of *assistant* to the sheriff; but the Court cannot to this day, as to lands in Ireland or the plantations. . . . In the case of *Lord Anglesey*, of land lying in Ireland, I decreed for distinguishing and settling the parts of the estate, though impossible to enforce that decree *in rem*; but the party being in England, I could enforce it by process of contempt *in personam*, and sequestration, which is the proper jurisdiction of this Court." The same principle that the Court of Chancery acts upon the conscience of the person living here was applied by Sir R. P. Arden, M.R., in *Lord Cranston v. Johnston* (3 Ves. 170, 5 Ves. 127), where a purchase at an under value by a judgment creditor of his debtor's real estate in the West Indies was set aside, a trust affecting foreign lands will be enforced, *Earl of Kildare v. Eustace* (1 Vern. 419, 422) and Judgment given for foreclosure of a mortgage upon lands situated abroad, *Paget v. Ede*, L.R. 18 Eq. 118, cf. *Lord Arglasse v. Muschamp*, *Lord Kildare v. Eustace* (1 Vern. 75, 135, 419); *Jackson v. Petrie* (10 Ves. 164); *Tulloch v. Hartley* (1 Y. & C. 114); *Fenney v. Mackintosh* (55 L.T. Rep. N.S. 733). The effect of the leading Common Law case of *Mostyn v. Fabrigas* (1 Cowp. 161, 1 Sm. L.C., 9th ed., p. 665) is thus stated by

Lopes, L.J. (40 W.R. 658): "This was an action for trespass to the person, but there are expressions and *dicta* of Lord Mansfield which make it abundantly clear that he thought the difficulty with regard to local actions arose not from any want of jurisdiction, but from restrictions with regard to locality" (1 Sm. L.C., pp. 686-688, 7th ed.). *Whitaker v. Forbes* (*ubi sup.*), was an action for arrears of a rent-charge in Australia prior to the commencement of the Judicature Act, and it was held that the venue in such action was local, and that it therefore could not be maintained in this country. Lord Cairns made the following observations (L.R. 1 C.P.D., at p. 52), which clearly show that his Lordship anticipated that the point would arise which the learned Judges in the recent cases were called upon to decide. "Recent legislation provides that for the future there should be no distinction between local and judicial actions as regards venue. It may be that hereafter such an action as this would be maintainable, but it is not necessary to express an opinion on the point."

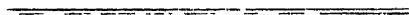
Two cases, on the other hand, seem almost decisory in the negative of the question of jurisdiction. The first is the well-known decision upon Constitutional Law, *Skinner v. The East India Company*, anno 1667 (reported 6 State Trials, 710), and referred to in the following terms by the Master of the Rolls in the course of his Judgment (40 W.R. 653): "The order of the House of Lords was 'that it be referred to all the Judges to consider of Skinner's petition, and to report to the House whether the petitioner was relievable on the matters therein mentioned in law or equity, and if so in what manner; upon the several parts of the complaints of the said petition: 'the Judges answered 'that the matters touching the taking away the petitioner's ship and goods, and assaulting of his person notwithstanding the same were done beyond the seas, might

be determined upon by His Majesty's ordinary courts at Westminster; and as to the dispossessing him of his house and island, that he was not relievable in any ordinary Court of law.' It must be observed that the question distinctly referred to the courts of equity as well as of law. The answer, therefore, is that the petitioner was not relievable in any Court either of law or equity. The answer could not be given in reliance on there being no local venue in the sense of there being no place of trial, because that difficulty had no application to courts of equity; it must be founded on the conclusion that for other reasons neither Court had jurisdiction. That opinion of the Judges has never been questioned. It agrees with the distinction I have shown to have been taken by all the foreign jurists. It is an agreement by the English Judges with that distinction, a distinction as to jurisdiction and not as to procedure." In the second case,—*Doulson v. Matthews* (4 Term Rep. 503),—an action for trespass for entering the plaintiff's house in Canada and expelling him was held by the Court of Queen's Bench not triable in this country, because the cause of action stated in the pleadings was local. Again, in 1763, in the leading case of *Pike v. Hoare* (2 Eden, 182), the Court of Chancery declined to direct an issue to try the validity of a will of real estate lying in the American Colonies, Lord Northington saying: "I build my opinion materially on the fact of the lands lying in Pennsylvania, for a will of lands lying in any of the Colonies is not triable in Westminster Hall (*cf. per Willes, J., L.R. 2 H.L. 259-60*). *Cf. Shelling v. Farmer* (1 Str. 646). A Court of Equity refused in *Norris v. Chambres* (3 D.F. & J. 583, 29 Beav. 246) to declare a lien upon foreign land, although the parties were domiciled here (*cf. re Hawthorne, L.R. 23 Ch. D. 743*). And in *Cookney v. Anderson* (1 D.J. & S. 365) it was held that the title to land is to be determined not merely according to the laws of the country where the land is situate,

but by the Courts of that country. In *the M. Moxham* (34 L.T. Rep. N.S. 557), an action for damages done by a British vessel to a pier in Spain was admitted for trial in England upon the ground that the parties had entered into an agreement to submit themselves to the jurisdiction only. The cases of actions for trespass to land referred to in *Mostyn v. Fabrigas* (*ubi sup.*) were regarded as having been overruled by *Doulson v. Matthews* (*sup.*). The argument that the Judicature rules had extended the jurisdiction was answered by the decisions in which it has been laid down, that those rules did not confer rights, but related only to procedure. *Lyell v. Kennedy* (L.R. 20 Ch. D. 484); *Brittain v. Rossiter*, *ib.* (11 Q.B.D. 123, 129).

Thus the point has been settled against the exercise of the jurisdiction by the English Courts. If there is no law where the right of action is alleged to have arisen, no right has been violated. If there has been a violation of a right, English Courts might grant a remedy *in rem*, but, according to the law, they have no jurisdiction to do so.

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### III.—THE INDIAN PRINCES: THEIR STATUS AND TREATIES.

#### I.

*OUR INDIAN PROTECTORATE* (London and New York: Longmans. 1893) is the taking title of a comprehensive, suggestive, and well-intentioned work by Mr. C. Lewis Tupper, of the Punjab division of the Indian Civil Service, who, during his furlough at home in 1891-2, with laudable zeal devoted much of his time to the reading of various papers of considerable merit before the East India Association, the London Chamber of Commerce, and other public bodies, in which he expounded various aspects of Indian polity. The present volume may be briefly characterised as an attempt to describe what the author has defined as "Indian Political Law," that is, the relations of the British Indian Government, as the Paramount Power in India, with the Princes and Chiefs in that great peninsula. This term and domain of Political Science, Mr. Tupper seeks to differentiate from International Law and its principles. This motive of the work is sketched out with much ability in the opening chapter, where, *inter alia*, the author remarks that "International Law stands to Indian Political Law very much in the relation of the Roman Law to the Law of Nations"—a proposition which it is manifest will at once challenge scrutiny, and invite to closer controversy. Yet he makes the significant admission that "International Law has some application to the Indian States"; and he adds, "as between the suzerain and the feudatories, there are in India, as in Europe, legations, negotiations, treaties, and other agreements." Again, "one of the chief marks of Indian sovereignty is the exercise of certain powers of government without the

delegation of any authority to exercise them under any British enactment."

Just so ; and it may be at once observed that in these unavoidable acknowledgments of the sovereignty—"divisible" (as Mr. Tupper has it) but real sovereignty—in the Indian States, there is an issue raised that crops up in every chapter of the book ; and which, we will not say, vitiates, but overloads the general bearing of the author's whole argument. This is more obvious in the phrase, adopted in the preface, and which dominates the application of Mr. Tupper's theory all through—"the Indian Feudatory States." This term must be held as implying a fatal misconception, one which—though of late years loosely used in a popular sense—can have no historical or scientific weight in any serious review of the political status of the indigenous Principalities, Powers, and Dominions of India. In the present brief notice, it is not practicable to go into detailed juridical argument ; but for our immediate purpose this elementary definition may serve—"the Feudal System is the name generally given to the system of *land tenure* and social arrangements which prevailed in Europe during the period commonly known as the Middle Ages." This is sufficient to indicate how totally foreign is the term "Feudatory States" when sought to be applied as between the political sovereignties of India and the British Indian Government, however much the terms "Imperial" or "Paramount" may be insisted upon in respect of the latter. Surely it is too late in the day to revive the sophistries with which Lord Dalhousie and his apologists sought, in course of their disastrous career of political spoliation, to confound States with "estates," or their heedless and perverse use of "escheat," "lapse," and the like feudal terms. To anticipate somewhat, we may here observe that Mr. Tupper in too many passages appears as an apologist of Lord Dalhousie ; though his own better juridical training

induces him to imply many judicious and prudent reserves; which, by the way, were conspicuously absent from the recent audacious effort in the "Rulers of India" series, to palter with the verdict that history has pronounced on the Dalhousian "Reign of Terror."

## II.

That our author has come under the influence of the recent morbid recrudescence of the Dalhousian tradition is evident, amongst other passages, from this estimate of that politically unscrupulous pro-consul's quality: he says: "Lord Dalhousie was not the man to be led by a sinister or selfish argument. His arguments were his slaves and not his masters; and [though] in the exigency of prospective self-defence he may have condescended to use some which his own judgment in reality despised." Now if the negatives be omitted from this passage it would not be easy, in the same compass, to express a more just condemnation of Lord Dalhousie's (in the political sense) "sinister and selfish" crusade against Indian Sovereignties and States, our Treaties and Alliances with which were, and are our chief title to Imperial sway in India. No whitewashing, no *ex post facto* pleas of expediency, can obliterate this sound conclusion as to the true historical and political relation between the British Government and the Indian States. Nor is the ethical and juridical weight of that truth anywise impaired merely because circumstances permitted Lord Dalhousie and his confederates to trample on those Treaties and extinguish several of those sovereign States. As to Mr. Tupper's apology for the sophisms and specious pleas used by Lord Dalhousie in support of his revolutionary and destructive policy,—which lame apology, as cited above, we have helped out by suggesting "though" for "and,"—that these sophisms had really become his "masters," has been proved up to the hilt by a

writer who has gone far deeper into the modern political history of India than this rising Punjab Civilian seems ever likely to penetrate. This estimate of the Marquis of Dalhousie, which we proceed to quote, will serve not only as a set-off to Mr. Tupper's, but, once for all, it meets by anticipation, the whole series of eulogies on that misguided statesman which are scattered through the whole volume, and so largely lessen its value as a political treatise. Our version runs thus :—

“ Lord Dalhousie was a clever, energetic public functionary, with considerable power of expression. . . . In a secondary position, he might have been a valuable public servant. . . . But he was deficient in more solid qualities. He had no originality, and no foresight. He never penetrated causes, nor calculated consequences. . . . In the State papers of almost every Governor-General since Warren Hastings, we obtain now and then a glimpse of some great principles of government—something that betokens an insight into human character, into the feelings and interests of the strange people whose ancient civilisation and complicated forms of society must be so largely modified by the extension of British supremacy. Nothing of the sort can be found in the political minutes of Lord Dalhousie. You may search them in vain for a single new idea, for a single striking thought, for one word of generous regret or genial hope; for anything but the peculiar dialectics, at once peremptory and tortuous, by which he made out his case for annexation, and the cold-hearted formal arrangements by which his plan was to be carried out. He abolished a Kingdom as coolly and with as little compunction as he abolished a Board. He was much admired at Calcutta during the last three years of his administration; but it was simply a proof of those imperfect sympathies and that total blindness to everything but some immediate showy result, which are wholly irreconcilable with any pretension to statesmanship.” And, again, “ No man who took a statesmanlike and original view of Indian affairs in any department was ever admitted to the confidence of Lord Dalhousie, or ever obtained the slightest influence over him. He was incapable of understanding them. . . . He silently declined consulting with Sir William Sleeman (in regard to Oude). He shelved Sir



Henry Lawrence. The few eminent men in the Indian Services who deprecated the policy of annexation before 1851 had all been removed by their [previous] sphere of duty from the petty forms and details of a regular Collectorate, or the routine of an established office. In the fields of Indian diplomacy, and in the management of newly-acquired and unsettled tracts of country, they had been made to deal with States instead of districts, and had been brought face to face with natives of all classes, who were neither their suitors nor their subordinates [that is, they had obtained by experience that true Imperial insight, which it was not given to the Whig emissary to evolve out of his own consciousness]. These were not the men to find favour in Lord Dalhousie's eyes. He did not want originality nor liberality. He wanted unquestioning acquiescence."

Here, it may be remarked in passing, one of the typical men of that quality and period was Sir George Russell Clerk, who resigned his post as Governor of Bombay rather than carry out the Dalhousian decree for the destruction of the premier Mahratta State of Sattara. He afterwards became Lord Canning's trusty counsellor in his noble conciliatory policy, and to him is attributed the drafting of that truly imperial State paper, the Adoption Despatch of 1858.

The above extracts are from *Retrospects and Prospects of Indian Policy* (Trübner. 1868). It may serve to connect and supersede the many woefully weak places in the historical portions of Mr. Tupper's arguments, if we ask the attention of impartial politicians and jurists to the passages in that irrefutable work, wherein Lord Dalhousie's forensic pleas in the cases of Sattara, Nagpur, Oude, the Punjab itself, and Mysore are severally scrutinised, exposed, and effectually disposed of in the daylight of Treaties and official documents of the period. As to the last named Principality, happily saved from the hands of the spoiler, see again pp. 36-8 of the *Mysore Reversion* (London: Trübner. 1868), where, by parallel and implication, the whole tenour of Mr. Tupper's

apologies for the Dalhousian policy is refuted and made of none effect.

### • III.

Let us now revert to our author's opening chapter, wherein, with much skill, he faces the question as to the source and origin of his "Indian Political Law." It is here, where his modest sub-title applies, "An Introduction to the study of the Relations between the British Government and its Indian Feudatories." As to the latter essentially erroneous term, that has already been criticised. In course of his preliminary approach (pp. 5-13) towards tracing out a basis for this newly-named branch of political jurisprudence, Mr. Tupper advances many observations that may prove suggestive for students of that science: as, for instance, his criticism of Austin's doctrine of "the indivisibility of sovereignty." When, however, our author comes down to definitions of origin (p. 10), it will be seen what thin ice he has to tread upon; but his dictum is concise enough, thus: "The source of this law, which has supreme importance, is, without doubt, *Usage*—the ACTUAL PRACTICE of the Indian Government in its dealings with its *feudatories*." (The capitals and italics are ours, for cause that will appear.) In citing the eminent persons who, we are told, have contributed to "the rapid and systematic development of Indian Political Law during the last thirty years," he includes Sir Henry Maine, Sir J. Fitzjames Stephen, Lord Hobhouse, with other Law Members of Council; Sir Charles Aitchison, Sir Mortimer Durand (with whom Mr. Tupper was associated in the Kabul Mission), and least, perhaps, to be expected in such a company, Sir West Ridgway! Then as to the authoritative documents out of which the terms and principles of Indian Political Law are said to have been evolved, these are described as "a variety of minutes, notes, and

compilations of a confidential character prepared by competent authorities in the course of their official duties." It is acknowledged that these occult sources of this very modern system of jurisprudence "are not, of course, open to the public," but "are well-known in Indian official circles." It will be observed there is not a word here about our Treaties with Indian Princes, by which, as juridical and historical bases alike, our Empire in India must stand or fall—though reference is made elsewhere to Sir Charles Aitchison's Collection of Treaties. Thus it is evident that the documentary bases of this brand new system of political law have to be taken largely on trust. What students and professors can make of such shadowy material is a problem that would baffle a theosophist to solve; so that, in the mean time, the general public and earnest enquirers are perforce obliged to accept Mr. Tupper's "introductory study" as the present *avatar* of the new juridical dispensation.

#### IV.

This discouraging account of the sources of Indian Political Law forces one to the conclusion that all we have to rely upon is "usage" and "the actual practice of the Indian Government." There we seem to have struck bottom, at last; but it only seems so. For when legists ask us to accept their own procedure and practice in their other character of executive politicians, as bases and authority for the substantive law they propound, we find ourselves landed by a very short circle in a position which is subversive of all law. But, even apart from this *reductio ad absurdum*, if Mr. Tupper could afford good evidence of his really knowing what *has* been the "usage" and "actual practice" in dealing with Indian States, their rulers, and their rights, we should have something to go upon. Unfortunately this evidence is lacking. On the contrary,

our author, in far too many instances to permit of enumeration, shews that his own knowledge of this asserted historical basis of Indian Political Law is superficial, partial, and fatally prejudiced by his own assumptions and *ex post facto* theories. To take here but one instance of this, his "Story of Mysore" (pp. 118-123), on which the "actual practice" of the Indian Government is summed up in the two lines: "At length in 1829, an extensive insurrection broke out, and British troops had to be employed to suppress it." This sort of slurring over the facts may be good enough for Marshman's *History*, and other popular school books; but it shows that Mr. Tupper knows worse than nothing of that and similar episodes, and, by implication, renders nearly all that he founds thereon as to "usage" and "actual practice" utterly untrustworthy. Our author is not aware, and it appears has given himself no care to ascertain that the disorders in Mysore, which led to all the painful and tangled events that followed, were directly due to the unspeakable perversity of the then Governor of Madras, the Hon. Sir Stephen Lushington; and, though less directly, also to the gross neglect of the Supreme Government to administer the provisions of the Treaty under which the Maharajah had been restored to his hereditary dominion after the overthrow of the usurper, Tipu Sultan. The honoured name of Lord William Bentinck has been cited as justifying the supersession of the Maharajah; but his hand had been forced by the lawless proceedings of the Madras Government, and by its Resident who succeeded in worrying out of his position the Commissioner, General Briggs, a man who did really understand the political law of India long before this new version of it was invented. Communications in those days were slow; but before Lord William Bentinck left India, he became well acquainted with the facts that had been kept back by the local authorities, and he deeply

regretted the error that had been committed in the supersession of the Maharajah's government. When the "actual practice" is claimed as a basis of law, such episodes should be really studied as these in Mysore, 'where, under the administration of the Madras and Indian Governments, one Resident's butler, Ramaswamy, and another's *sheristidar*, Chowrappa, were not only permitted, but supported in tyrannical and rapacious proceedings that resulted in that "extensive insurrection" which Mr. Tupper, in common with the man-in-the-street, ignorantly attributes to the native Prince. Before another edition of *The Protectorate* is called for, the author should devote his next furlough to fresh and real study, so as to find out for himself in how many instances our Protectorate has been grossly abused, that is scornfully disregarded, and "law" shamelessly defied. If he will look up General Briggs' correspondence with Bentinck and Mountstuart Elphinstone—much of it comprised in that officer's *Memoir* (London: Chatto and Windus. 1885)—he will find that his fanciful and popular "Story of Mysore" will have to be re-written, as also many of his superficial accounts of the Indian Government's "actual practice" in the cases of Sattara, Nagpore, Oude, and the rest.

Before proceeding to deal with the first of these cases, Mr. Tupper makes the significant admission that "towards the close of Lord Dalhousie's administration, there seems to have been a not unnatural impression that the native States of India would be gradually but quickly eaten away by the pressure of encircling British dominion." He also mentions, rather by the way—and not, as it was, one of the obvious and ominous warnings of the inevitable tendencies of that revolutionary policy—that some of the Princes, including certain Rajput Chiefs, who dared to speak, though, as it were, in confidential whispers, "told British political officers that they thought

the annexation of Sattara a case of might against right, and expressed the hope, not unmingled with dread, that the Rajput families (that is the indigenous rulers generally) might be saved from like disgrace and disaster; . . . the usual question was what crime had the Raja of Sattara committed that his country should be seized by the Company?" But this striking historical comment that goes to the very root of the infatuated subversive policy which is in question, seems to have little weight with our author. He proceeds to set out at its specious best (pp. 93-4) Lord Dalhousie's sinister plea, backed by the eager desire to serve our revenue and territorial interests, and based on the monstrous assumption—which runs all through that history of political chicane—that the right (that is the duty) of the Paramount Power to *regulate* and confirm succession by adoption, carries with it also the right (seeing there is the power) to *disallow* such succession, thereby destroying kingdoms and States, the continuity of which had been safeguarded, not only by our own Treaties, but also by immemorial custom, and the highest sanctions of Hindu religion. And a similar pernicious doctrine was applied to the Mussulman right and custom in the selection of heirs and successors.

With similar tenderness and misplaced tolerance, our author treats the sophisms of the destructive satrap, as applied to the ruthless confiscation of Nagpur and the Bhonsla family, which included by far the larger portion of their private property. As Mr. Tupper coolly remarks, "The strongest part of Lord Dalhousie's case for the annexation of Nagpur, was that which depended on the interests of India"—that is, the "Minute is devoted" to the naked, sordid plea of "the desirability of annexing Nagpur in the interests of England [not India], because the great field of supply of the best and cheapest cotton is in the valley of Berar and in Nagpur, and the adjoining

provinces." It is only fair to our author to remark that while he too easily accepts as historical apologies, Lord Dalhousie's "idols of the theatre"—those sophisms that had blinded in him the moral-political sense, such as "continuity of our territories," our "financial exigencies," the "general interests of India," and the "prosperity of its inhabitants"—Mr. Tupper, in the clearer atmosphere of to-day, gives us the assurance that if any Indian States were now exposed to such designs as those which Lord Dalhousie was permitted to carry out in 1849-1854, no such destructive result could follow in the present day. He says, "There is not one of those arguments from expediency which would now hold good as a ground for annexation;" and, what is more to the purpose on behalf of political equity and conservative Imperial policy, he adds: "Even the question of right, if it should be raised, which is highly improbable, would be debated in a different way and an entirely different spirit." We should think so, indeed; and for this belated virtue let us be thankful. But to irresponsible power, fresh temptations are never wanting; and with the example before us of the doings of the Simla Political Department in Kashmir, in High Asia, and Beluchistan, also the sinister proceedings of the British Residency at Hyderabad, there is still not less, but more, need for vigilance on the part of the few who cherish firm convictions of political equity and Imperial responsibility.

To the ruling case (and indelible disgrace) of Sattara, we can only refer very briefly. In this, as in all other examples, Mr. Tupper fails to free himself from the seductive influence of Departmental decisions, and those "final orders," which, however plausible, are never more than the popular statement of the plaintiff's case, after which the defence, if heard at all, has been thrust into the background. He says (p. 69): "A perusal of the record [as to Sattara] cannot fail to bring home to an impartial mind the conviction

. . . . that annexation was the best course to adopt in the interests of the people, matters of political and fiscal advantages standing by themselves, would never have induced them to agree to it," whereas, all the world knows, though our author does not see it, that these "advantages," from Mr. J. P. Willoughby's characteristic revenue-officer's pleas on to Lord Dalhousie's specious arguments, really sordid though unctuously phrased in his pretentious periods, were the only operative pleas for that typical political iniquity. Elsewhere Mr. Tupper refers to the final despatch of the [majority of the] Court of Directors; but he ought to know this was *Hamlet* without the Prince of Denmark. Where are the Minutes of Dissent? These comprise some of the clearest, most forcible, and noblest utterances of the best men of the Honourable Company; they give the lie to fate, and to the malign influence of the Board of Control, whose chosen instrument Lord Dalhousie was. We can, in this instance, concisely supply our author's omission and lack of historical knowledge. Let the student and the jurist refer to Colebrooke's *Memoir of Mountstuart Elphinstone* (London: Quaritch. 1861), and read what is there said on this striking incident. Colebrooke, as an intimate friend and an eye-witness, says: "I do not remember ever to have seen Mr. Elphinstone so shocked as he was at this proceeding; the treatment of the Sattara sovereignty as a *jaghire*, over which we had claims of feudal superiority, he regarded as a monstrous one; but any injustice done to this family was subordinate to the alarm which he felt at the dangerous principles which were advanced, affecting every Sovereign State in India, and which were put forward both in India and at home." Here we have the conviction of matured wisdom which cuts away the root of that "feudal" fallacy that runs through half the arguments of *Our Indian Protectorate*, and which must forbid its being accepted as of any permanent authority. We submit that, in any



subsequent editions of the book that may be called for, Mr. Tupper should include in the appendices—which are much required—the two letters of Elphinstone of May 13th, 1849, and February 13th, 1850, in which that eminent man sets out his clear and comprehensive convictions on this essential branch of British Indian polity, though with, his usual, almost undue moderation of expression.

With regard to the large question of Oude, which Mr. Tupper has treated at great length and with much skill, we can only speak of it too briefly, and mainly in order to invite attention to the work in which, in regard to this case, not only are the origin and bearing of the Treaties and juridical questions treated from a broader standpoint, but with more accurate historical knowledge, and in clearer political light. That is in Chapter V. of *Retrospects and Prospects of Indian Policy*. (London: Trübner. 1868.) The story is an exceedingly intricate one, as our author himself shews; but it was rendered all the more so by the peculiarly ingenious sophistries which Lord Dalhousie wove into it, and around it. As Mr. Tupper remarks, “the chief interest of the annexation of Oude to the students of Indian Political Law lies in the discussions of the Indian Government which set forth the justification of the measure.” Here we may say, in passing, that he does not seem to have paid equal attention to the Parliamentary *Oude Papers* of 1856 and 1858, which include the observations of two or three prominent English statesmen of the time, and in other ways afford material for a broader and fuller review of the whole subject. Our author spends pages in describing the misrule that prevailed again and again in that “Garden of India”; but he fails to see how this was largely due to the neglect of the Government of India to exercise the ample powers it had, and was under obligation by the Treaties to apply for the reform of the administration. This Sir William Sleeman, Sir Henry Lawrence, and others of the old school

of the Company's Political Officers (such as General John Briggs) had again and again urged on the Governor-General in Council. He does quote the weighty opinion of Sir Barnes Peacock, though without perceiving how large a part of the controversy that eminent lawyer's remarks covered, when he "considered that we should obtain a sufficient guarantee for future good government, without deposing the king or compelling him to abdicate, and to vest the whole of his territories (and sovereignty) in the British Government." See also the similar arguments of General Low (p. 77) and Sir J. P. Grant (p. 79). And why was not this conservative and constructive course taken, which was one in accordance with the real and true political law of India? The answer to this is given with irresistible force in the irrefutable work we have already cited, and from which it will be sufficient to give a few quotations that cover a wide field of argument, and include the vital considerations that govern the whole case:—"Down to the despatch from the Governor-General to the Court of Directors (August 22nd, 1885), the only plan for the reform of Oude which had been recommended in India and approved by the Home authorities, was that of *temporary management*, with a view to the ultimate restoration of purely native rule. During Lord Dalhousie's term of office the ideas of the Supreme Government underwent a complete change." In answer to the Duke of Argyll's ingenious apology for his friend's affected hesitation, it is pointed out that "Lord Dalhousie did not scruple to recommend a course which, according to his own expectations, would have led to an immediate insurrection, would have endangered the King's life, and would have given up the great city of Lucknow to pillage." (*Oude Papers*, 1856.) Again, "Whatever may be said in the published papers as to 'admonitions' and 'remonstrances,' it is a positive fact that no plan for improving the administration of Oude was ever countenanced. Some extensive

reforms prepared in concert by the native Minister and the British Resident at Lucknow . . . . were absolutely discouraged and defeated by the Calcutta Foreign Office.

- The Bengal Civilians did not want to give assistance, they wanted to take possession. . . . Oude, therefore, having been spared and neglected for twenty years, was, at last, absorbed by Lord Dalhousie, on the pretext of disorders in its government, which were all removable, and which might have been easily remedied without annexation, if there had been any wish to preserve the separate existence of that friendly and faithful State. But there was no such wish." In support of this view as to the true functions of a Protectorate, see Sleeman's *Oude*, Vol. I., where will be found the substance of a plan of reformation and effective administration through a native Board of Regency which that capable officer laid before the Government in 1849. He continued these appeals to the better mind of the Indian Government down to 1854, when he came to the conclusion expressed in a letter to one of his friends: "Lord Dalhousie and I have different views, I fear. If he wishes anything that I do not think right and honest, I resign, and leave it to be done by others. . . . We have no right to annex or confiscate Oude; we have a right under the Treaty of 1837 to take the management of it, but not to appropriate its revenues to ourselves." By way of comment on this we quote again from the *Retrospects*: "No doubt Lord Dalhousie had persuaded himself that the temporary management of Oude was not attainable, and if attainable would not be effectual for permanent reform. With the fixed purpose of absolute acquisition before him, he was very easily persuaded, and attacked the plan of temporary management with arguments and illustrations of transparent futility." "In contrast to this destructive and aggrandising doctrine, there is the beneficent obligation that rests on a Protectorate under

which, as regards Oude, may be cited the principles cherished by Lord William Bentinck, Lord Hardinge, Sir Henry Lawrence, and Sir William Sleeman, who were "opposed to annexation, but bent on reform." Sir Henry Lawrence, in an article\* in the *Calcutta Review* about 1845, described his remedy for the misgovernment of Oude, and in a private letter to J. W. Kaye gave this homely comment thereon: "We have no right to rob a man because he spends his money badly, or even because he illtreats his peasantry. We may protect and help the latter without putting the rents into our own pockets"—or, let us add, stealing the territories of the State. This last remark may seem to suggest one more quotation we will give from the *Retrospects*, and which may serve to cover and answer most of Mr. Tupper's philanthropic, though unconstitutional doctrine of expediency, which he pleads in condonation of the destruction or supersession of the Protected, but Treaty-founded (limited) sovereign Indian States: "The incompetence, misconduct or contumacy of a reigning Prince, though it may justify his deposition, does not annul a Treaty, or annihilate the State. A revolutionary crisis may justly be made an occasion for reform, but not, as Lord Dalhousie planned it, a pretext for rapacity. The reign of a bad Prince may, afford a fair opportunity for improving, but not for appropriating a State." Mr. Tupper, in concluding the chapter on Oude, quotes Mr. R. C. Irwin to the following effect:—"There can be no doubt that Lord Dalhousie and the Members of his Council, and General Outram were one and all firmly convinced that by *assuming the administration* of Oude, they were acting in the interests of humanity, and conferring a great blessing on millions of people" (the italics are ours). But what has been said or quoted already will shew this was what they did *not* do. Instead of "assuming the administration" through the people of Oude, and under its

own constitution, they disregarded our Treaty obligations to that end; they violently abolished its monarchy, and destroyed its existence as a State. Lord Dalhousie thereby laid the train for a terrible explosion and conflagration, of which some scarred and battered relics still remain in and about the city of Lucknow, as warnings to future statesmen who may be tempted to depart from the ancient paths of political rectitude, and the sacred obligations of Imperial responsibility.

## V.

Coming to more recent times and instances, it is something to be thankful for that Mr. Tupper, quoting the Queen-Empress' Proclamation at Delhi, on New Year's Day, 1877, loyally acknowledges, as part of Indian political law, that it is "not upon the conquest of weaker States, or the annexation of neighbouring territory, that Her Majesty relies for the development of her Indian Empire." But in spite of, nay, even under cover of the new version of Indian political law, we may find "the old foe with a new face." It is not quite a happy illustration of the new principles of political law when Mr. Tupper cites "the late restoration of power to the Maharajah of Kashmir." Surely he cannot be quite ignorant of the disgraceful proceedings, the chicanery and forgery, under the very nose of our Resident and the Simla Political Department, in sequence to, if not in pursuance of which, the Maharajah was superseded, and our Treaty with that kingdom flagrantly disregarded; or that, under cover of the vaunted "restoration," the troops and resources of that kingdom are, at this very day, being utilised for "the conquest of weaker States, and the annexation of neighbouring territories . . . for the development of Her Majesty's Indian Empire"—not *in* India, indeed, but *in* High Asia. Are these Kashmir transactions, as "the actual practice" of the Indian Government, to be

adduced presently as one of the sources of Indian political law ?

With many of M<sup>s</sup>. Tupper's conclusions as to constituent portions of the present situation in India, we may be inclined to agree, though not in following the circuitous route by which he has arrived at them. His book reads smoothly ; it will soothe some hesitating minds, and will conduce to the British public's good conceit of itself ; but as a scheme of "law" it is crude, and its political history is in many passages similar to a mirage. The high road of real history comprises many crooked paths ; it has steep ascents and sharp declivities, amidst which lie deep ruts and muddy tracks ; but our author, surveying the scene from his own safe plateau, necessarily overlooks these rugged and miry ways. Hence he seems to have said to himself, "Go to ; let us paint the landscape as it now appears, where every prospect pleases, and only Indian Princes are, or have been, vile."

AN ENGLISHMAN.

#### IV.—EXTE RRITORIALITY.

THE always important question of Extra-territoriality, or Exterritoriality, has of late drawn forth an interesting volume from the pen of a former Editor of the *Law Magazine and Review* Quarterly Digest of All Reported Cases, Mr. F. T. Piggott (*Exterritoriality : The Law relating to Consular Jurisdiction and to Residence in Oriental Countries*. By F. T. PIGGOTT, M.A., LL.M. W. Clowes & Sons, Lim. 1892), who left us for Japan, where he was called upon to fulfil the honourable function of Legal Adviser to the Japanese Cabinet.

It has also produced a valuable Article by Sir Travers Twiss, in our contemporary, the *Revue de Droit International*

(Brussels, 1893, Art. *La Jurisdiction Consulaire dans les pays de l'Orient et spécialement au Japon*), which was elicited by a previous Article in the *Revue* by M. Paternostro, the substance of which had formed a Lecture given by the learned author at Tokio in the course of 1890.

The recent change of front, which has, to a considerable extent, manifested itself in Japan with regard to Europeans, arising, as it has, as far as a visible cause can be alleged for it, from so common and so unavoidably recurrent a cause as a Maritime collision, gives fresh interest to a subject which yet in itself requires, or ought to require, no such temporary fillip to arouse our interest in it. But the fact being unquestionable, as we take it, that the simple circumstance of a collision between a British and a Japanese vessel has caused great friction in the relations between Great Britain and Japan, it seems well to devote such space as we are able to spare at the present moment to some consideration, however brief and imperfect, of the question of Exterritoriality.

Here we are met, *in limine*, by a point which Mr. Piggott takes, and which strikes us as very subtle, viz., the distinction which he would fain draw between Extraterritoriality and Exterritoriality; and we must ask ourselves the question, do we admit that such a distinction exists? For ourselves, we must say we do not think that it does exist, but we do not rest solely upon that conviction, because we think that even if we allowed it for argument's sake, it would still be a distinction too subtle for actual practice. It appears to us that the full, correct epithet, so to speak, of this principle or doctrine, whichever people may prefer to call it, of the Law of Nations, is Extraterritoriality, and that Exterritoriality is simply a short, and, therefore, more convenient form, which has the further advantage of being, practically the only form used in French, a language which may still claim a large place as the

language of Diplomacy. Whenever, therefore, we may ourselves use the epithet Exterritoriality, we must be understood to use it in the ordinary sense, as equivalent to Extra-territoriality, viz., a status or position, or an extension of Municipal Law, *Extra territorium*. Thus the status of an Ambassador is a status by which he is considered as being Extra-territorial, i.e., outside the territory in which his residence is locally situated, and the action of the Queen's Orders in Council and of Courts constituted thereunder in Japan or in any Foreign country is an Extra-territorial action of such Orders or Courts. In each case, the local sovereign admits the exception, or it would subsist in theory only and not in practice.

Mr. Piggott enquires whether Allegiance has anything to do with Exterritoriality, and comes to the conclusion that Obedience to Acts of Parliament has been substituted for Allegiance. As a matter of fact, the term Allegiance, like the terms Suzerainty and Suzerain, is a term of Feudal Law, and they all consequently chiefly have an Archaic character at the present day, and are all equally generally misunderstood, and sometimes ludicrously misapplied. Thus on the occasion of a proclamation of British Suzerainty over certain portions of South Africa, outside the limits of the Cape Colony, it was openly asserted by many, no doubt in good faith, that the Queen had thereby acknowledged the superiority to herself of certain Dutch Boers and African savages.\* This was, it need not be said here, a perfectly ludicrous misreading of the term Suzerainty, but it served to shew how utterly erroneous were the prevalent notions in our day of almost any terms of Feudal Law which remain in use. The perversion of facts involved in the notion of Suzerainty which we have just mentioned is not by any means exceptional, it is simply a good specimen of its kind. We do not mention these points, of course, with a view to Mr. Piggott, but with a view to that



British Public which is at once so wanting in knowledge and so full of self-confidence, but which is often able to do much mischief by its influence over the members of the House of Commons.

Mr. Piggott draws some ingenious inferences of possible action under the Foreign Jurisdiction Act, as when he suggests (p. 30) that it would be quite within the bounds of possibility for Jurisdiction under that Act to be established in a European or civilised country, and pictures to us British Consuls in France empowered thereunder to act as Arbitrators in disputes between, say, two Englishmen in Paris. This is perhaps a hypothetically possible case, but scarcely probable. The position of Her Majesty's Secretaries of State in the matter of the Foreign Jurisdiction Act is somewhat peculiar. They certainly appear to be constituted by sect. 4 a sort of Court of Final Appeal on all questions arising "as to the existence or extent of any jurisdiction of Her Majesty in a foreign country." It is probable that although the expression a "Secretary of State" is general, and vests identical powers in the entire body of such Secretaries, questions on the Foreign Jurisdiction Act would be submitted to Her Majesty's Secretary of State for Foreign Affairs. Mr. Piggott thinks it "by no means probable that it was intended to turn the Secretary of State into a judge," but we cannot say that we feel equally certain on this point. The position of the Home Secretary is just such a position, in fact, in the grave question of the remission or confirmation of a capital sentence, and it is scarcely less Judicial in other matters which are frequently referred to him.

Mr. Piggott, while treating the alleged "omnipotence of Parliament" with what he considers to be "becoming respect," is nevertheless, in fact, not much more persuaded of its reality than we are. For it would seem that of the two statements of this supposed doctrine cited by him

from Sir James Stephen's *History of the Criminal Law in England* (II., p. 37), and from Lord Halsbury's Judgment in *MacLeod v. Attorney-General for New South Wales* (L.R. [1891] App. Cas. 455), he prefers the latter, as we do ourselves.

The case supposed by Sir James Stephen is, purposely no doubt, very forcible as well as highly improbable, and this latter circumstance may afford the true explanation of its use by Sir James. The distinguished historian of our Criminal Law supposes that the British Parliament might pass an Act to the effect that the whole Criminal law of England should apply to the conduct of Frenchmen in France, and that our Central Criminal Court should have Jurisdiction over all offences against that law committed in France. And such a law, Sir James Stephen says, the Judges could not refuse to put in force. But he does not say that it would authorise the English Judges to go on Circuit in France and hold Assizes and gaol deliveries in that country. It is, therefore, obvious, as Mr. Piggott remarks, that, in effect, such a law comes to being merely equivalent to saying that if persons do certain things abroad, and afterwards come to this country, they will be punished for what they have done. Still, that would be a rather lame and impotent conclusion to so solemn a farce as that of Sir James Stephen's hypothetical Act. And yet that an Act, equally foolish and impossible, is scarcely beyond the limits of possibility, seems proved by the very case in which Lord Halsbury delivered the Judgment from which Mr. Piggott cites with satisfaction the clear and logical utterance that "Except over her own subjects, Her Majesty and the Imperial Legislature have no power whatever," *i.e.*, as Mr. Piggott marginally annotates, no "right of legislation," but also, we think, carrying the sense of "no power to enforce such legislation, if made." The Colony of New South Wales had, apparently,

purported to legislate for every person, of whatsoever nationality, who should commit bigamy; but as Lord Halsbury, C., said, "The Colony can have no such jurisdiction," and equally, we should say, with Lord Halsbury, the Mother Country can have no such jurisdiction. The fact of a British Colonial Legislature having legislated so utterly *ultra vires*, certainly seems to lend a colour of greater possibility than might otherwise be thought within reasonable bounds to the hypothesis of Sir James Stephen. But, possible or not, such a hypothesis appears to us to be a *reductio ad absurdum* of the favourite theory of the Omnipotence of Parliament.

In regard to the application of the Fugitive Offenders Act to Oriental countries, Mr. Piggott has some criticisms to offer which seem to us to have a wider applicability than that which is specially within the purview of his book. The Act, he says (p. 102), is really "Extradition applied to our Colonial Empire." This brings up the whole intricate question of Extradition, to various aspects of which frequent reference has been made in this *Review*.

Now, as Mr. Piggott rightly remarks (p. 103), a foreign country which has granted Extraterritorial privileges does not thereby become a Colony [viz., of the United Kingdom]. This is undoubtedly true, and probably no one would be found to deny the proposition. And again, Mr. Piggott as rightly continues, "it seems to me impossible to claim by usage the surrender of a sovereign right of which no mention is made in the Treaty. And a sovereign right which is possessed by a civilised and uncivilised, a Christian and Mahomedan State alike, is to protect all who come within its borders. There is a right to refuse to surrender, as well as a right to surrender, criminals to their own Government, and this right reposes in the Sovereign."

This is in close accordance with the view of Extradition, and of that which Mr. Piggott prefers to describe as "what

is sometimes called the 'right of asylum,' " which we have long maintained in the pages of this *Review*, and we are therefore the more pleased to find it in the pages of our old contributor's interesting volume. Incidentally Mr. Piggott opens up various points worthy of further consideration by him in a future edition, such as the question of International Bankruptcy, which comes to the surface in regard to the great difficulty which would be experienced, say in Japan, from the absence of any general recognition of a complete discharge in Bankruptcy. So with regard to Copyright and Company Law, in both of which questions of considerable difficulty are suggested by Mr. Piggott's acquaintance with the practical aspect of such matters in Oriental countries, under the Foreign Jurisdiction Act. Some of these, such as the "simple case of more than twenty persons at Shanghai, forming an Association to trade in Shanghai alone, and registering under the laws of Hong Kong," may well be said to lie at present along the "unbeaten tracks of our Company Law."

The Article in the *Revue de Droit International* on the same subject as that of Mr. Piggott's book was called forth, as we have remarked, by a Lecture delivered at Tokio by Professor Alessandro Paternostro, one of the European Councillors of the Japanese Ministry of Justice, which was subsequently published in the *Revue*.

In his utterances at Tokio, Professor Paternostro, while asserting the right of Japan to denounce the Treaties under which Consular Jurisdiction exists, yet advised his Japanese hearers against this extreme measure, and we cannot but think that in this advice recent events have shewn that Professor Paternostro was wise.

It has been frequently urged that the rapid progress of Japan in Western culture and Western modes of Government fully warranted her in claiming exemption from the tutelage in which, so to speak, the Treaties and Consular Courts

thereunder hold her. But it has often occurred to us that rapid progress is not always sound. There is a wise saw in Italy to the effect *chi va piano va sano*, and we fear that the pace at which Japan has assimilated, or appeared to assimilate, Western manners and customs has been far too rapid for soundness. It is one thing to draft a Constitution and another to carry it out in daily life. It is one thing to have a House of Lords and a House of Commons, and another to have a working acquaintance with Constitutional Government. Sir Travers Twiss, while admitting the beautiful simplicity of the denunciation of the Treaties as a mode of cutting the Japanese Gordian knot, suggests that there is a previous question concerning the nature of Treaties and their obligation.

What is a Treaty in International Law? enquires Sir Travers. To answer this question he takes up Prof. Paternostro's own words, which are, according to the Professor, to be found in all the best writers on International Law: "A Treaty is the contract by which two or more States regulate, in the manner which they judge most conformable to existing circumstances, the questions, interests and relations between them."

To this Professor Paternostro adds that "a Treaty only expresses the moral and material forces of the States at the time of its being made." What may be the precise meaning of this rider, as it were, Sir Travers does not feel quite certain, neither do we. But we are willing to suppose, with Sir Travers, that what the learned Professor meant was the same as the doctrine embodied in the famous maxim cited by Vattel, *Omnis Conventio intelligitur rebus sic stantibus*. Does this imply that, *rebus mutatis*, the Treaty falls to the ground? asks Sir Travers; and, as a purely Academic question, we may agree with him that the answers given are not altogether at one. Grotius (*De Jure Belli*, II., cxvi.) pointed to the historical cases of Ambassadors returning

home when they learned on their way that the state of affairs was so changed that there was no *materia legationis* left for them. This, we may perhaps be permitted to remark, is not by any means a parallel case to altered circumstances abrogating a Treaty which has been made.

Following Grotius, the late Dr. Bluntschli, who was, with Sir Travers Twiss, one of the founders of the Association for the Reform and Codification of the Law of Nations at Brussels, more than twenty years ago, laid down in his *Droit International Codifié*, §450, that not all modifications which may come to pass in the political order of a State are ground for annulling Treaties, but that some of these modifications do free States from those Treaty obligations which are no longer in harmony with facts. Thus a Treaty based on the State Religion, or the form of Government, would cease to be in force on a change from Roman Catholicism to Protestantism, or from a Republic to a Monarchy, and *vice versa*.

As to the Extra-territorial status of the subjects of Christian States in Eastern [non-Christian] Countries, Professor De Martens of St. Petersburg, in his *Traité de Droit International*, basing avowedly on facts rather than on the theories of Text-writers, affirms that it is not only a privilege and a right, but an obligation, and this view, Sir Travers reminds us, was accepted by the Institute of International Law at its Turin Session, 1882.

With regard to Bluntschli's view above cited, we may point out what serious consequences it would entail in such a case as that which happened in Mexico, when the Archduke Maximilian of Austria accepted the Imperial dignity which was substituted for the Presidency of the Mexican Republic. All Treaties made with the Republic would, on that theory, at once have been *ipso facto* denounced, and the same would be the case with Brazil, if a restoration of the Empire were to be the outcome of the present internal dissension there.

In other words, confusion\* would reign supreme, which cannot have been the intention of the parties to the Treaties thus suddenly annulled, and which, in fact, is \*contrary to the very theory of a Treaty, which is an Agreement between States with a view, amongst other things, to the preservation and stability of peace and harmony among the nations. Looked at from this point of view, therefore, Bluntschli's doctrine appears to us to be subversive of the essence of a Treaty, as known to us in the theory and practice of the Law of Nations, and to that extent, therefore, we should say that it would be dangerous to accept it. There is this additional flaw in Bluntschli's view, that it entirely overthrows, or is at least repugnant to, the doctrine of the continuity of States under whatsoever form of Government they may from time to time choose to live. A State is a *cætus hominum*, and this *cætus* agrees to be governed in a certain way, but although it is common to speak of the French Republic and the German Empire, expressions which simply indicate the existing form of Government in each of those countries, it is obvious that France was just as much France under the Elder Bourbons as under the House of Orléans, or under the Empire or the Republic. And Germany would be no less Germany if it were to constitute itself a Republic to-morrow. To say that Treaties with France or Germany would be abrogated by the mere fact of a change of Constitution would be simply to introduce a constant element of confusion into the relations of all States, for no form of Constitution can be considered permanent and immutable.

Sir Travers shews that in China the Extra-territorial character was accorded to the Arab merchants at Canton so far back as a thousand years ago, in all the essential points which we find as the marks of our own Consular Jurisdiction. It was accorded about the same time by the Khalifs to the Western Nations in the persons of the

merchants of Amalfi, who were given leave to regulate their own affairs at Alexandria under a Podestà of their own nationality. Under these circumstances, it would seem that Sir Travers Twiss is amply justified in refusing to admit the view which represents the Exterritorial Consular Jurisdiction as an encroachment by Christian Consuls subsequently to the 12th century. That is a purely historical question, quite distinct from the other question whether there may not from time to time have been more or less ill-founded extensions of Consular Jurisdiction, and also from the question, which is one of pure fact, whether that Jurisdiction may not be, as Professor De Martens considers, in some points defective, and lending itself to complaints on the part of both the Governments and nations in whose countries it is wielded.

Grotius laid down that if one of the parties to a Treaty violated it, the other party was freed from its obligations, and might withdraw from it. But the denunciation of the Treaty in such a case, says Sir Travers, is not obligatory.

The real question at issue, as between Japan and the Treaty Powers, is whether the circumstances have so changed since the outward adoption by Japan of Western forms of Law and Administration that the state of things which the Treaties presuppose no longer exists.

To this our own answer would be that we think the modes of life and of thought of a nation cannot be altered in a day, or by a stroke of the pen. Marquises and Viscounts and Presidents of Senates and Chambers of Representatives may be made by a stroke of the Imperial pen, but the working of a Constitution is a matter of time. Japanese Law may be modelled on European Codes, but the point is how it is administered, and whether Constitutional Government can yet be said to have taken root. In fact, as Sir Travers pertinently asks, how shall Japan make proof of having really attained her majority?



Let her submit, says Sir Travers, to the principle of the Law of Nations recognised in the Protocol of the Treaty of London, 13th March, 1871. It would seem from recent events that Japan has some large claims to advance in the matter of what she considers Territorial Waters. This is, to our mind, an additional reason for a *festina lentè* in the matter of the somewhat loudly demanded abolition of the Consular Jurisdiction in Japan. Let Japan first shew that she is really governing herself in the spirit of Western notions of Constitutional Government, and let her place before us her views as to what constitute her Territorial Waters, and we shall be in a better position to judge how near she may be to attaining her majority, and whether the time is at hand when it may be wise, in the interests of both parties, to abrogate the Treaties which establish the existing Extra-territorial Consular Jurisdiction in the land of the Rising Sun.

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## V.—THE LEGISLATIVE COUNCIL AND JUDICIAL INDEPENDENCE IN INDIA.

A LETTER TO THE EDITOR OF *The Law Magazine and Review*.

SIR,—In May last the Government, in reply to Lord Stanley of Alderley's motion regarding the administration of justice in India, admitted that "it was contrary to right and good principle that the Executive and Judicial powers should be united in one person," but declared that it was impossible, at the time, to find the financial means for making the necessary reform.

Now, the difficulties of the Indian Exchequer are shewn, in the last Budget statement, to have arisen, not from diminished revenue, but almost entirely from increased expenditure. It seems difficult, therefore, to believe that,

during a period of profound peace, when no danger looms in the immediate future, some retrenchment in the overgrown Army expenditure of India should not be practicable, such as would admit of initiatory steps being taken towards the reform of a system condemned on all sides, and which the Government itself admits to be wrong in principle. Far, however, from any endeavour having been made towards that end, the evil is being seriously aggravated by the creation of new Courts of Judicature, which are to be presided over, not by duly qualified and independent Judges, but by Government servants directly amenable to the influence and control of the Executive.

In 1892 the "Madras City Civil Court Act" created a tribunal having a concurrent jurisdiction with the Chartered High Court of the Presidency, but evidently intended, through favourable clauses regarding costs, to divert suits from the High Court, which inspires the people with confidence, to the newly-created tribunal, the constitution of which is looked upon with dismay. Since then, a Bill has been introduced in the Legislative Council of the Viceroy—the "Presidency Small Cause Court Bill"—for the purpose of creating another tribunal on the same lines; and when, at the sitting of the Legislative Council on the 4th January last, the Legal member proposed that the Bill should be withdrawn, unless the jurisdiction of the projected Small Cause Court were limited to suits of 1,000 Rupees and special qualifications were imposed upon the Judges, His Excellency, the Viceroy, as President, immediately intervened, declaring that the statements of the Legal member of Council should be taken to represent his own views, and in no way to commit the Government of India.\*

\* My authority is the *Pioneer*, for 7th January, 1894. The official report of the debate will probably come by the next mail from India. [See *Postscript*.]

This remarkable incident<sup>\*</sup> discloses a marked divergence of view amongst the official members of the Legislative Council; but it also discloses the important fact, that some of the official members of that Council object to being made the instrument for giving the force of law to measures which are repugnant to their judgment and their conscience. That similar incidents have not hitherto been more frequent may perhaps be ascribed to the Indian Secretary of State's despatch of the 24th November, 1870, in which the Cabinet Minister asserts his power to require the Governor-General to introduce a measure, and to require all the members of his Government to vote for it.

A well-founded impression prevails that Parliament intended the Legislative Council of India to be a Deliberative body; but the above-mentioned despatch has converted it into a mere Administrative Office, charged with giving the form and authority of law to the determinations of a Cabinet Minister. Deliberation, at all events, has been excluded from the Council, and the Indian Legislature has become in practice a pure delusion. The Council Amendment Act of Lord Cross might have corrected the fault had the Representative principle been incorporated in it to a reasonable extent; but in its actual form, with the evident determination of the Government to continue using the Indian Legislature as an auxiliary in the promotion of the interests of the British Cabinet, under the name of Imperial interests, the evil must endure until the injustice and suffering which it inflicts on the Indian populations become unendurable.

I am, Sir, your obedient servant,

J. DACOSTA.

1st February, 1894.

*Postscript*, 5th February.—The Indian mail has just brought the official report, printed in the *Gazette of India*

(Calcutta), for 13th January, 1894, Pt. VI., of the speech delivered on the 4th January by the member in charge of the "Presidency Small Cause Court Act Amendment Bill." It seems evident that the object of this measure, as framed by the Executive, is to divert suits from the High Court to a Small Cause Court, in which the Judges are to be, not trained lawyers, but Government servants, who may, without possessing any real professional qualification whatever, have attained the technical position of having been called to the Bar. Moreover, Section 8, after providing for the status of the Chief Judge, runs thus:—"The other Judges shall have rank and precedence as the Local Government may from time to time direct." On this point the member in charge (Hon. Sir Alexander Miller, Q.C.) observed:—"Now, there is not, so far as I know and believe, any Court in the civilised world—there is certainly not any British Court—in which the Judges other than the Chief Justice or the Chief Judge, have any difference in rank or precedence other than that which follows from the dates of their appointments; and to place it in the hands of the Executive Government of any country to alter the precedence of the Judges, would be to do the very thing which the English Constitution has been labouring to avoid ever since the Revolution, that is, to keep the Judges dependent on the favour of the Executive."

J. D.

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[\*\* The speech of Hon. Sir Alexander Miller, to which our correspondent justly draws attention in his *Postscript*, contains, it appears to us, strong internal evidence, in other passages which we have not space to reproduce, of the gravity of the questions at issue under the specious name of the "Presidency Small Cause Court Act Amendment Bill," and also that Sir Alexander is fully awake to the fact

of their gravity. We are glad to find that where the Judges of the High Court, Calcutta, have spoken on the subject, to the effect that "whenever a professional man can be obtained it is desirable that he should be obtained" for the office of Judge, Sir Alexander is on their side, and also that he would rather his present Bill "were abandoned altogether than allowed to pass leaving, as things stand at present, Judges who might be appointed having no professional qualification whatever." We are also glad to find Sir Alexander's feelings thoroughly in accordance with our own on the point that the Judges of the High Court would be the best body to frame Rules of Procedure for the new Presidency Small Cause Court, and that it is not a proper course to pursue to leave these rules to be framed by the Judges of the new Court, who are Government servants, with the consent of the Local Government. This would practically amount to the Executive taking the place of the Judicature, and the whole tenor of the establishment of the Small Cause Courts would appear to be the aggravation of the evil, admitted in Parliament even by its apologists on financial grounds, of the Fusion of the Executive and Judicial Powers, and would constitute a new attack on Judicial Independence in India. *Quod omen avertat Deus!*—ED.]

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## VI.—FOREIGN MARITIME LAWS: IV. SCANDINAVIA.

### CHAPTER VI. .

#### *Bottomry.*

174. When a Commander, in a case of necessity, for the prosecution of the voyage or the preservation or forwarding of the cargo, raises money by bottomry on ship, freight or cargo, in the manner hereinafter prescribed, the lender on bottomry can only recover his money at the conclusion of the voyage from the things that are pledged. But on these things he has the rights conferred by Chapter XI. (*post*) of this Law on holders of a maritime lien.

The Swedish Code adds a clause in terms allowing the lender and borrower on bottomry to agree on the premium or maritime interest to be paid for the loan.

B. 156, 164, 165, F. 315, 317, 325, G. 680, 681, H. 569, 588, I. 599, P. 630, R. 385, S. 719, 731. E. 149, 165-167.

175. A loan on bottomry may be raised on ship, freight, and cargo, jointly, or on any of them severally. If a loan is raised for the sole benefit of the cargo, the cargo may be separately bottomried. In other cases, the cargo can only be bottomried in conjunction with ship and freight. If the ship and cargo are jointly bottomried for the same loan, the freight is deemed to be included in the security, but in other cases the freight must be specifically mentioned as included.

If anything has been bottomried for money, the expenditure of which does not concern it, and the lender recovers from the article so bottomried, the owner of it can recover the amount he has to pay from the other articles on behalf of which the expenditure was

made and has the same rights as if these articles were bottomried to him.

See Arts. 268 and 281, *post*.

In the most usual case of a bottomry bond on ship, freight, and cargo for the benefit of ship or to enable her to earn freight, the practical effect of this rule would appear to be to exhaust ship and freight before touching the cargo.

F. 315, 320, G. 680, 681, H. 569, 574, I. 593, 595, P. 628, R. 382, S. 723, E. 155.

176. Before raising money on bottomry, the Commander must make an accurate statement of the circumstances which necessitate his having recourse to bottomry, observing as far as possible the procedure laid down in Art. 41, and also referring to depositions taken by the Consul, or, if there is no Consul at the place, by some other authority.

As to communication with owners of ship and cargo, see Arts. 52 and 57, *ante*, and as to bottomry at home port, Art. 48, and as to the position of a bottomry bondholder where money has been improperly raised, Arts. 49, 175.

G. 686, H. 372, 579, I. 509, 591, R. 383.

177. When money is raised by bottomry, the signed contract must be in writing, and, to be valid, as a bottomry bond, must contain :—

- (1.) The denomination "Bottomry Bond" (*Bodmeribrev*), or some similar term, stating that the contract is for a loan on bottomry ;
- (2.) The name of the lender ;
- (3.) The amount of the loan and the premium upon it ;
- (4.) A statement of what property is pledged ;
- (5.) The name of the ship ; •
- (6.) The particulars of the voyage for which the loan is made.

The Swedish Code adds (7)—The signature of the master and date and place of issue,—obvious provisions which are practically covered in this version by requiring the contract to be signed.

G. 684, H. 570, I. 590, P. 626, S. 720, 721. E. 150. •

178. A lender on bottomry may require the bond to be made out in duplicate or more copies, of which the

contents are identical and each must state how many copies are executed.

The transfer of a bottomry bond to a third person does not act as a bar to any objection to the circumstances in which the loan was raised or the necessity for it.

The Swedish Code seems to imply that the Bond is not transferable unless it contains a clause allowing a transfer; otherwise it is to the same effect as this version.

B. 162, 163, G. 685, 687, H. 573, I. 592, P. 627, S. 722. E. 154.

179. Average contributions for which the property that is bottomried is liable are paid by it without any abatement of the bottomry debt, but if, after payment of such contributions, the value of the property pledged proves insufficient to pay the bottomry loan in full, the lender on bottomry must bear the loss.

B. 166, 167, F. 330, G. 691, H. 589, I. 603, P. 631, S. 732. E. 171.

180. The Commander is bound to use all reasonable means to preserve and save the bottomried property; except for urgent reason he must do nothing to enhance the risk which the lender on bottomry had reason to anticipate from the conditions of the bond; otherwise, the Commander is liable for any loss the creditor sustains thereby.

If the Commander alters the bottomry voyage except in case of necessity or in the interest of the bondholder, or deviates from the ordinary route for any reason except that of saving life, or after the voyage has terminated exposes the bottomried property to a fresh risk, and subsequently the property proves insufficient to meet the bottomry bond, he will be held responsible for the balance, unless he can prove that the deficiency would have existed even if he had strictly conformed to his duty.

B. 164, G. 693, 694, H. 587, 590, I. 598.

181. Unless otherwise agreed, the bottomry debt becomes due at the place where, in accordance with the conditions of the bond, the voyage terminates, and on the



seventh day after the ship's arrival without allowing any running days.

If the voyage terminates before the ship reaches her destination as stated in the Bottomry Bond, the debt becomes payable on the seventh day after the termination of the voyage, and at the place where the voyage does, in fact, terminate. The Commander must give the lender on bottomry immediate notice of the discontinuance of the voyage. If the discontinuance is due to any causes other than such as are mentioned in Arts. 159 and 160, the Bottomry Bondholder has a right to compensation for any expense occasioned thereby.

G. 688 699, H. 570, P. 626.

182. After a bottomry debt is due and payment has been demanded but not made, the Bottomry Bondholder is entitled to interest at 6 per cent. per annum on the amount of the loan and on the premium. If the premium is calculated by time it ceases to accrue after the bond is matured.

The Swedish version substitutes legal interest for 6 per cent., but as legal interest on unpaid Mercantile loans is 6 per cent. in Sweden, there is no real difference.

B. 161, G. 688, I. 596, S. 736.

183. When payment is due, it may be demanded on presentation and surrender of any of the original copies, endorsed with a receipt of the amount. If several holders of copies present them and demand payment, the bottomry debt must not be paid to any of them, but the Commander must place the amount in safe deposit, and give notice to the claimants of his having done so. The Commander must not pay the bottomry debt before the date at which it matures unless he gets possession of all the copies he has signed.

The Swedish version contemplates the rival claimants appointing a trustee to hold the money, and only in default of their agreement lets the Commander select his own deposit, and in the second clause only requires all the bonds to be got in when the Bond is transferable. See Art. 178, *ante*.

G. 689, 690. •

184. If the bottomry bond is not presented for payment at maturity, the Commander may place the amount of it on secure deposit, and so free the bottomried articles. If money is so deposited, the Commander must give the bottomry creditor immediate notice of the fact.

185. A bottomry bondholder may arrest the articles which are bottomried on the arrival of the vessel at the place named in the bond, or on the termination of the voyage at any other port, notwithstanding that payment is not yet due. This arrest need not be followed by further proceedings for compensation, and is only operative for eight days after the bond is matured.

If a bottomry loan is not paid off after due demand, the bottomry bondholder may, without a formal judgment of the Court, issue execution against the articles bottomried, and afterwards sell them by public auction.

If there is reason to fear that cargo under bottomry will deteriorate if detained for a considerable period, application may be made to the authorities, and with their permission the goods may be sold as soon as possible. The sale must always be announced in sufficient time to allow buyers at least one day's notice.

If, when the execution is put in force, an objection is raised to the validity of the bond or of the claim, or if a third party comes forward claiming a better title to the goods, the Court may require the bottomry bondholder to find security as a condition precedent to issuing execution.

The Swedish version is shorter ; it contains only the first sentence and a clause authorizing a sale on application to the High Bailiffs, and delivery of the proceeds to the Bondholder to satisfy his claim.

G. 692.

186. If the voyage is abandoned before it has commenced the bottomry loan becomes due at once at the place where the voyage should have begun, and in such case the borrower, in lieu of the agreed premium, pays 5 per cent. interest per annum on the capital and 3 per cent. by way of

commission. If the ship has sailed, the premium must be paid, even if the voyage is subsequently abandoned.

G. 699, H. 586, I. 597, S. 727, 729. E. 169.

## V. PORTUGAL.

### CHAPTER VII.

#### *Passengers.*

ART. 563. The carriage of passengers will, in the absence of special agreements, be regulated by the provisions of this chapter.

B. Bk. II., Tit. iv., G. Pt. 6, I. Bk. II., Tit. iv., Ch. iv., M.M.C., Ch. viii.

564. If a passenger does not come on board at the proper time, the whole passage-money is due :—

§1. If he fails to come on board in consequence of death, illness, or other cause beyond his control (*força maior*), which prevents him prosecuting the voyage, or if he gives notice that he abandons it, half passage-money is due :—

§2. If the passenger is prevented from prosecuting the voyage by the Commander's act, he has a right not only to the immediate repayment of his passage-money, but also to compensation for his losses and damages.

§3. If the hindrance is caused by accident or causes beyond the control of the parties (*força maior*) which affect the ship, the passage-money must be repaid, and the contract is deemed to be rescinded without any claim for compensation on either side.

B. 127-131, G. 667, 668, 670, 671, I. 583, H. 522, 524, 525, S. 694, 696, 697, Sc. 169, 170. E. 136, 137.

565. If, in the course of the voyage, a passenger chooses to land at a port other than that to which he has taken passage, full passage-money is due.

§1. If he disembarks at a port other than that to which he is bound, in consequence of the Commander's act

or default, he has a claim for compensation for losses and damages.

§2. If he disembarks in consequence of an accident or a cause beyond control (*força maior*) affecting either the ship or the passenger, passage-money is due *pro ratâ itineris peractâ*.

B. 130, 131, G. 667, 668, 670, 671, I. 584, S. 698, Sc. 170. E. 136, 137, 140.

566. If a passenger is lost by shipwreck, nothing is repayable to his heirs which has been paid, nor can anything be demanded from them if not paid.

G. 669, I. 584. E. 138.

567. If the sailing of the ship is delayed for any reason other than accident or circumstances beyond control, a passenger has a right to remain on board, and also to be victualled during the whole period of the delay, and further, to compensation for loss and damage.

B. 133, G. 672, I. 585, S. 698.

568. If the delay exceeds ten days, the passenger may rescind the contract, and claim the repayment of passage-money that he has paid :—

§1. Provided always that if the delay is caused by bad weather, the repayment will only amount to two-thirds.

B. 133, G. 672, I. 585, S. 698.

569. Where a vessel is used exclusively for the carriage of passengers, she must take them to their destination without other stoppages than such as have been notified beforehand or are customary.

B. 126, I. 586, H. 529, S. 698, 701.

570. If the ship deviates from her voyage through the action or default of her Commander, the passengers will be boarded and lodged for the whole time of such deviation at the expense of the ship, and have a right to compensation for loss and damage if the contract is rescinded.

I. 586.

571. If the ship carries cargo as well as passengers, the Commander may go into any port that is proper for him to discharge in.

B. 126, I. 586.

572. When the ship is detained for repairs a passenger may rescind the contract on payment of passage-money in proportion to the distance accomplished :—

§1. If he prefers to wait till the ship resumes her voyage there is no increase in the passage-money, but he will victual himself during the delay.

B. 133, G. 672, I. 587, H. 526, S. 698. E. 141.

573. The victualling of a passenger during a voyage is deemed to be included in the passage-money :—

§1. If the victualling is excluded, it is the duty of the Commander to supply what is necessary to a passenger at a fair price.

§2. In the case of voyages beyond the mainland of the realm passengers have a right to stay on board and be victualled for such time as the vessel remains at the port of destination, if not exceeding 24 hours.

B. 121, I. 588, H. 530, S. 702, Sc. 173. E. 142.

## CHAPTER VIII.

### *Privileged Claims and Mortgages.*

#### SECTION I.

##### *Privileged Claims.*

574. The claims specified in this section have a preference over any general or special privileges on chattels conferred by the Civil Code.

F. 214, I. 666, H. 312, 313, 318, Sc. 267.

575. In case the ship or any other object to which the privilege attaches deteriorates or diminishes in value the privilege still attaches to the residue or to what can be salvaged and placed in safety.

3, I. 667, Sc. 271.

576. If the proceeds of the ship or articles to which the privilege attaches do not suffice to pay off the privileged debts of a class, they are divided rateably among themselves.

B. 4, F. 191, I. 669, S. 581.

577. The endorsement of a document conferring a privileged claim carries the privilege with it.

F. (1885) 12, I. 670.

578. Debts which are privileged upon the ship are ranked in the following order:—

- (1.) Costs and Court charges incurred in the general interest of the creditors.
- (2.) Rewards due for assistance and salvage.
- (3.) Pilotage and towage into port.
- (4.) Tonnage, light and anchorage dues, public health and other port charges.
- (5.) Charges for watching the ship and warehousing its appurtenances.
- (6.) The wages of the Commander and crew.
- (7.) Charges for looking after and repairing the ship, its apparel, and furniture.
- (8.) The repayment of the price of cargo that the Commander has found it necessary to sell.
- (9.) Insurance premiums.
- (10.) Balance of purchase-money due for the last transfer of the ship.
- (11.) Expenses incurred in repairing the ship, its apparel, and furniture for three years prior to the voyage, reckoning from the day on which the repairs were completed.
- (12.) Debts arising from the contract for building the ship.
- (13.) Insurance premiums on ship if the whole is insured, or on the part and its appurtenances which are insured and are not included in No. 9.
- (14.) Compensation due to shippers for short delivery or for damage to cargo.

§1. The debts mentioned in Nos. 1 to 9 (inclusive) refer to such as are contracted in the course of the last voyage and on account of it.

- (1.) B. 4 (1), F. 191 (1), G. 757 (1), 770, I. 675 (1), H. 317, S. 580 (2). E. 5 (1).
- (2.) B. 4 (6), I. 675 (2), H. 313 (1), Sc. 268 (1).
- (3.) B. 4 (2), F. 191 (2), G. 757 (5), 772 (3), I. 675 (4), H. 313 (1), S. 580 (3), Sc. 268 (1). E. 5 (2).
- (4.) B. 4 (2), F. 191 (2), G. 757 (3), 772, I. 675 (3), H. 313 (2), S. 580 (3) E. 5 (2).
- (5.) B. 4 (3, 4), F. 191 (3, 4), G. 757 (1, 2), 770, I. 675 (4, 5), H. 313 (3, 4), S. 580 (4, 5). E. 5 (3, 4).
- (6.) B. 4 (7), F. 191 (6), G. 757 (6), 761, 771, 772, I. 675 (7), H. 313 (5), S. 580 (6), Sc. 268 (2). F. 5 (6).
- (7.) B. 4 (9, 10), F. 191 (5), I. 675 (6), H. 313 (6), S. 580 (8). E. 5 (5).
- (8.) B. 4 (8), F. 191 (7), G. 757 (9), 772 (5), H. 313 (6), S. 580 (7), Sc. 268 (3) E. 5 (7).
- (9.) B. 4 (12), F. 191 (10), I. 675 (10), S. 580 (9). E. 5 (10).
- (10.) B. 4 (15), F. 191 (8), I. 675 (12), 315 (1), S. 580 (8). E. 5 (8).
- (11.) F. 191 (8), H. 313 (7), S. 580 (8), Sc. 268 (4). E. 5 (8).
- (12.) B. 4 (10, 11), F. 191 (8), H. 313 (8), S. 580 (8). E. 5 (8).
- (13.) B. 4 (12), F. 191 (10), I. 675 (10), S. 580 (9). E. 5 (10).
- (14.) B. 4 (13), F. 191 (11), G. 757 (8), 772 (4), I. 675 (11), H. 313 (10), S. 580 (10), Sc. 268 (4). E. 5 (11).

579. Privileges pertaining to debts on the ship are extinguished :—

1. By the ordinary methods in which rights are lost.
2. By a sale of the ship by Court: as soon as the purchase-money is paid into Court, the privilege and claim of the creditors is transferred to the fund.
3. By a voluntary sale effected after citing the privileged creditors, when three months have elapsed without their taking steps to avail themselves of the privilege or attach the purchase-money.

B. 6, F. 193, G. 767, 768, I. 678, H. 316, S. 582. E. 7.

580. Debts which are privileged upon cargo are ranked in the following order :—

1. Court charges incurred in the general interest of the creditors.
2. Rewards due for salvage.

3. Custom House duties at the port of discharge.
4. Charges for freight and discharging.
5. Warehouse expenses.
6. Contributions to general average.
7. Moneys advanced on bottomry of this security.
8. Premiums of Insurance.

§1. The privileges of which this Article treats may be general, affecting the whole cargo, or special, affecting a portion of it, according to whether the debts are in respect of the whole or a portion of it.

B. 71, 80, F. 280, 306-308, G. 781, I. 671 identical, except that (7) and (8) are transposed, H. 487, 548, 566, S. 665-668, 678, Sc. 276. E. 124-126.

581. Privileged claims on cargo lapse if the creditors do not make use of them prior to the discharge of the cargo, or within 10 days immediately following it if during that time the cargo has not passed into the possession of a third party.

B. 80, 81, F. 307, 308, I. 672, S. 667, Sc. 277, E. 126, 127.

582. Debts which are privileged upon freight are ranked in the following order:—

- (1.) Court charges incurred in the general interest of the creditors.
- (2.) Wages of the Commander and crew.
- (3.) Contributions to general average.
- (4.) Advances on bottomry of this security.
- (5.) Premiums of insurance.
- (6.) Amount of compensation due for short delivery of cargo.

(2.) B. 63, F. 271, G. 757, 759, I. 673, H. 321, 451, S. 587, 646, Sc. 268. E. 30, 89.

583. Privileged claims on freight lapse as soon as the freight is paid, except in the case mentioned in Art. 523, when the privilege attaching to seamen's wages is only extinguished when six months have expired from the date of the abandonment of the voyage.

G. 774, S. 646.



## SECTION II.

*Mortgages.*

584. Mortgages on ships are created either by operation of law or by agreement between the parties.

B. 1, 134, F. (1885) 1, 35, S. 578.

585. Mortgages on ships, whether created by operation of law or voluntarily, produce the same results, and are governed by the same rules as mortgages of real property, so far as their peculiar nature permits, and except as modified by the present section.

B. Bk. II., Tit. v., F. Law of 1885.

586. Mortgage on ships can only be effected by their actual owners or by a special power of attorney :—

§1. When a ship belongs to more than one person, the whole may be mortgaged for the expenses of fitting out and making a voyage, by the express agreement of the majority representing more than half of the ship.

§2. A part owner of a ship cannot mortgage his share in the ship except with the consent of the majority defined in the preceding paragraph.

B. 23, 136, F. (1885) 3, G. 467.

587. A mortgage on a ship that is being built or to be built is also allowed for the expenses of building, provided that the deed of mortgage at least specifies the length of the keel of the ship and approximately its other principal dimensions, as also its probable tonnage, measurement, and the building yard in which it is being built or to be built.

B. 138, F. (1885) 5, I. 486, Sc. 3.

588. A mortgage on a ship is created by an attested deed except in the case mentioned in § 2 of Art. 591.

B. 135, F. (1885) 2, I. 485.

589. A mortgage on a ship securing debts that carry interest covers interest for five years in addition to the capital.

B. 143, 145, F. (1885) 13, H. 315 (2).

590. Mortgages on ships will be registered by the registrar of the Tribunal of Commerce at the ship's home port :—

- §1. In the case of a mortgage being given on a ship which is being built or to be built, the proper registrar is the one at the place where the building yard is situated.
- §2. Where the ship's port of registry is different from that where she is built, a certificate must be produced from the latter stating if there is a mortgage on it or not ; if there is, the mortgages that are registered must be transferred and registered at the ship's port of registry.

B. 139-141, F. (1885) 6, I. 485, 486, H. 315.

591. A shipowner may place on the register a provisional mortgage specifying what sum or sums of money may be raised on the ship in the course of the voyage :—

- §1. The entry of the mortgage will be made when out of the realm by the regular Portuguese Consular officer.
- §2. If there is no Consular officer at the place where it is desired to mortgage, the mortgage may be effected by a deed executed on board by the contracting parties in the presence of two witnesses, and entered in the ship's account book.

See F. (1874) 26, now repealed by F. (1885) 39.

592. Mortgages will be paid after the satisfaction of debts privileged on the ship in the order of priority of the entry on the Commercial register :—

- §1. If there are several mortgages registered on the same day, they will be paid *pro rata*.

B. 142, 150, 151, F. (1885) 10, 34, I. 675 (13), H. 315 (2).

593. Mortgages on ships are subject to extinction by lapse of time in accordance with law.

B. 143, F. (1885) 11.

594. If the ship is lost or condemned, the rights of mortgagees include the remains of the ship and also the insurance.

<sup>c</sup> B. 149. See F. (1874) 17, which, however, is now repealed by F. (1885) 39, I. 667, 675 (13).

F. W. RAIKES.

## VII.—CURRENT NOTES ON INTERNATIONAL LAW.

### *Public International Law.*

#### Hawaii and "Intervention."

The doubts expressed by us in this *Review*, in the number for February, 1893, as to the spontaneity of the Hawaiian "Revolution," have been more than justified by subsequent events. The intervention of the United States proves to have been more "precipitate" even than we surmised when we used that term on the occasion above referred to. It would appear, in the light of after events, to have been dictated largely by the promptings of partisan politics on the eve of the General Election. Great Britain experienced something similar a few years ago, in the case of the "Sackville Incident."

The new President, in his Inaugural Message to Congress, dealt with his predecessor's policy of annexation in a spirit of almost humiliating candour.

"After a thorough and exhaustive examination," ran the Message, "Mr. Blount has submitted to me his report, shewing beyond all question that the Constitutional Government of Hawaii has been subverted with the active aid of our representative to that Government, and through intimidation caused by the presence of an armed naval force of the United States which was landed for that purpose at the instance of our Minister.

"Upon the facts adduced, it seemed to me that the only "honourable course for our Government to pursue was to "undo the wrong . . . . and to restore as far as "practicable the *status* existing at the time of our forcible "intervention."—(*Times*, 5th December, 1893.)

Acting upon this view of the matter, the President recalled the offending Minister, Mr. Stevens, and gave "appropriate instructions" to Mr. Willis, the new representative of the United States, to take steps to restore the *status quo*.

Early in January last Mr. Willis called upon the Provisional Government to surrender office, and handed them a conditional promise of amnesty from the Queen (*Times*, 10th January, 1894). The Provisional Government has, however, so far declined to submit. The United States Cabinet has meanwhile remitted the whole matter to Congress (*Times*, 11th January, 1894).

On 6th February an amendment, proposed in the House of Representatives, approving of annexation and recognition of the Provisional Government was lost, while the substantive resolution was carried condemning the action of the late United States Minister, Mr. Stevens, approving the attitude taken up by the President, and deprecating annexation as uncalled for and inexpedient (*Times*, 7th and 8th February, 1894). How the matter will end it is at present difficult to foretell, but it seems extremely probable that, by a strange irony of fate, the United States Government will have to forcibly "intervene" a second time in order to remedy what the President called its first "unjustifiable intervention."

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#### • *Private International Law.*

##### **Foreign Sovereigns and Ambassadors.**

The Court of Appeal, as was anticipated, dismissed the appeal in the case of *Mighell v. The Sultan of Johore*

(L.R. [1894] 1 Q.B. 149),<sup>c</sup> relying upon the well-known decision in the case of *The Parlement Belge*, 5 P.D. 197.

The points of real interest in the case were two in number: firstly, the admission of a letter from the Secretary of State for the Colonies as conclusive evidence of the sovereignty of the defendant Sultan; and, secondly, the *dictum* of the Court that the mere fact of the Sultan having lived and acted as a private person, and resided here under an assumed name as a private person, was not evidence of submission to the Jurisdiction. "I should put it thus," said Kay, L.J., "the foreign Sovereign is entitled to immunity from civil proceedings in the Courts of any other country, unless upon being sued he actively elects to waive his privilege and to submit to the Jurisdiction."

A very pretty question was raised in the case of *Musurus v. Gadban and others* (10 Times L.R., p. 90).

The defendants in an action brought by the executor of Musurus Pasha, the late Turkish Ambassador to this country, counterclaimed for £3,000, alleged to have accrued due from the Pasha during the actual term of his Embassy. The defence was that the debt was barred by the Statute of Limitations. To this the plaintiff in the counter-claim replied that time had been prevented from running on two grounds, partly owing to the Ambassadorial privilege, which, under the Statute 7 Anne, c. 12, precluded litigation prior to the Pasha's recall, and partly owing to his subsequent absence beyond seas (under 4 and 5 Anne, c. 16).

The Divisional Court held that the action was not barred on these grounds, and laid it down further that the privilege extended beyond the date of actual recall, and until a reasonable time for departure from the country had elapsed, and that the possibility of serving out of the Jurisdiction under Order XI., R.S.C., did not affect the principle of 4 and 5 Anne, c. 16.

**Domicile.**

There is an important decision of Stirling, J., in the case of *In re Beaumont*, L.R. [1893] 3 Ch. 490; as to the domicile of fatherless children. The Court, relying mainly on *Pottinger v. Wightman*, 3 Mer. 67, and *Johnstone v. Beattie*, 10 Cl. and Fin. 42, held (a) that there is a "considerable weight of authority for the proposition that when the mother of infant children re-marries, their domicile ceases to follow hers," and (b) that in any case the change of a fatherless infant's domicile "is not to be regarded as the necessary consequence of a change of the mother's domicile, but as the result of the exercise by her of a power vested in her for the welfare of the infants, which in their interest she may abstain from exercising, even when she changes her own domicile."

J. M. GOVER.

## Quarterly Notes.

### Trial by Jury in Italy.

According to *La Tribuna* (Rome, 14th December, 1893, 2nd edition), one of the best informed and most outspoken of Roman journals, public opinion in Italy has been greatly shocked at the immunity which Juries have of late accorded to malefactors in several cases of murder and attempted murder. In view of these by no means isolated instances of the miscarriage of justice, an outcry has been rashly raised for the suppression of the Jury system altogether. Those who entertain more moderate views, however, recommend the reform rather than the total abolition of this popular institution. If, as the *Tribuna* points out, it were possible to elevate the character of the Judicial bench from its present unsatisfactory condition to a really high level of excellence, Trial

by Jury might be discarded, not alone without misgivings, but even with readiness, in all cases not involving Political issues. But, according to the above cited authority, to effectuate such a transformation would be a task of far greater difficulty than an amelioration of the present system of Trial by Jury, and it therefore suggests that the efforts of the Legislature should, in the first place at all events, be directed to a reform of the latter by adopting to a large extent as a model the system which prevails in England. The modifications proposed are a revision of the Jury lists so as to ensure as far as possible the attendance of citizens possessing a higher order of intelligence and capacity than that which is now generally available; the infliction of stringent penalties upon Jurymen absenting themselves from their duties without justification or excuse; and more particularly their rigorous confinement during the whole period that they are exercising their functions. Upon the urgent necessity for the restriction just mentioned, the writer of the article in question is very emphatic, adducing in favour of his argument facts which, by those accustomed to the fair administration of justice, will be received as an unpleasant revelation. He does not hesitate to affirm in the most absolute and unmistakable terms that there are advocates, even in the Courts of Rome itself (though at the Capital instances are rarer), whose fame and fortune have been built up, not by Juridical erudition, forensic skill, or oratorical capacity, but by a systematic and successful "lobbying" of the Jury during the intervals of the hearing, such "lobbying" consisting at times of no more than friendly persuasion, but at others proceeding a good deal farther than that. Here in England, where Bar and Jury are happily above suspicion, the knowledge of such a deplorable condition of things will excite a feeling of painful surprise, and it will be readily conceded that not only should com-

munication between advocates and Juries, during the progress of a trial, be rigorously prohibited, but that such malpractices, when discovered, should be visited with exemplary punishment at the hands of those whose duty it is to protect from discredit and degradation the honourable profession of the Law.

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#### A New French Review of International Law.

We have just received the first number of a new French publication, the *Revue Générale de Droit International Public* (Paris: A. Pedone), edited by Antoine Pillet, Professor of International Law in the Faculty of Grenoble, and Paul Fauchille, Doctor of Law and Laureate of the Institute of France, with the concurrence of other well-known writers and Professors, such as Edouard Clunet, of Paris, editor of the *Journal du Droit International Privé*; De Martens, of St. Petersburg, who contributes to the opening number; Stoerk, of Greifswald, the continuator, and, therefore, in a certain sense, the *alter ego* of De Martens, in his *Nouveau Recueil*, and Ernest Lehr, of Lausanne, the present General Secretary of the Institute of International Law; Lammasch, of Vienna, and several distinguished French publicists. The opening number contains only three Articles, as we should reckon, but they are all of considerable interest. It is significant of the influence which the recent Arbitration in the Behring Sea Fisheries has exercised over men's minds that two out of these three Articles are devoted to the subject of Arbitration, Prof. De Martens treating of it in connection with the question of the limits of Territorial Waters, while Prof. L. Renault, of Paris, discusses a New Mission given to Arbitration in International differences. The only Article not devoted to the special subject of Arbitration is by one of the editors, M. Pillet, and takes up the broad ground of the subject-matter of the new *Review*, viz., Public International Law: its constituent elements, its field, and its object.



Besides these Articles and a separately paged part devoted to the printing of Texts of Laws and Decrees and other Documents, there is a nearly equal amount of space given to a running commentary on events connected with International Law, under the title of "Chronique des faits internationaux," followed by a Bibliographical Bulletin of Books and Periodicals, where, by the way, our valued contributor, Dr. Gover, has his name fused with the title of his contribution, and appears under our November number in the strange guise of "GOUVERCURRENT. Notes de Droit International." In their next number we shall, no doubt, find that our Paris friends will have learned to separate the man from his work. In touching on Brazil, the *Chronique* draws attention to the singular position taken up by the Foreign Naval force stationed off Rio, which, as it truly remarks, seems to have assumed the attitude of a sort of International Court, advising both sides, and probably not blessed by either. In his Article on the Paris Tribunal, Prof. De Martens inclines to the view that ten miles may be found a practical limitation for the Territorial Waters of the Future, for, as he justly remarks, the limit cannot go on being indefinitely extended. There is much that deserves more notice than we can at present give to our new contemporary. We shall look forward with interest to succeeding numbers of the *Revue Générale de Droit International Public*.

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## Reviews.

*Supplement to the Fourth Edition, by L. G. G. Robbins, of Bythewood and Farman's Conveyancing.* By THE EDITOR and ARTHUR TURNOUR MURRAY, of Lincoln's Inn, Barristers-at-Law. Sweet and Maxwell, Limited. 1893.

This is a very diligent piece of work, indispensable to all who possess Mr. Robbins' Edition of *Bythewood and Farman*, and of

considerable value to all Conveyancers who still turn for precedents to its monumental predecessor. The justification of such a Supplement is its completeness, and the present work appears, on examination, fairly to fulfil that object down to July, 1893. Except for cases not appearing in the *Law Reports*,<sup>\*</sup> other Reports are not generally referred to. When a case has been reported in both *Law Journal* and *Law Times*, although not in the *Law Reports*, a reference to the *Weekly Notes* might, we think, have been omitted. The new matter is introduced with convenient variety, sometimes by a plain reference to the actual authority, sometimes by a short statement of the law as altered. In this latter respect, we cannot always agree with the authors of the *Supplement*; thus the statement of *Re Faux* and *Re Lancely*, on p. 395, hardly expresses the point, which was that the legatee in question was not really a witness at all. The book, however, distinctly fulfils its claim to be, within its sphere as a Supplement, "a guide to recent case law and legislation." Though itself alphabetical in arrangement, it contains a full Index, and there is a Table of comparative references for the Old Reports and the Revised Reports, which those who use the latter volumes will appreciate.

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*Reminders for Conveyancers.* By HERBERT M. BROUGHTON, of the Inner Temple, Barrister-at-Law. Horace Cox. 1892.

This is a useful little book, the greater part of which has already appeared in the columns of our valued contemporary, *The Law Times*. References from time to time to several leading authorities on the now moribund art of conveyancing cannot but prove convenient to the modern Scrivener.

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*Copyright, Patents, Designs, Trade Marks, &c.* By WYNDHAM ANSTIS BEWES, LL.B., of Lincoln's Inn, Barrister-at-Law. Adam and Charles Black. 1891.

The reason given for the somewhat unscientific grouping together under the same cover of chapters upon the above-named branches of law is, that being the principal legal monopolies depending on invention, they stand in close relationship one to another. The connection does not, however, appear to all minds particularly obvious, and, judged by the result, Mr. Bewes's

performance seems far from satisfactory. There is quite enough learning on the subject of Copyright and Patents, for instance to entitle them to a volume apiece, unless, indeed, the author had been possessed of such a genius for lucid condensation as manifests itself throughout the Digests of Sir James F. Stephen. In such a case he might perhaps have been able to produce a serviceable treatise. But in the 341 pages of which the volume is composed we do not find any strong evidences of the author's power in that direction. We are told on the title page that the work is a manual of practical law, and we endeavoured to put its practical character to the test by looking, under the head of International Copyright, for that important section of the Act of 1886, viz., sect. 6, which deals with works which have been lawfully produced before the Berne Convention was brought by it into operation in the United Kingdom. On turning to page 57 what do we find? "The whole working of the details of the Act is left to Orders in Council, and for this reason it seems unnecessary to print here the Act itself as *most* of its provisions [the italics are ours] re-appear in the Order set out below, which was published in the *London Gazette* of 2nd December, 1887; and for notes on Act see page 71." The Order in Council does not reproduce sect. 6 of the Act, and we therefore turn to page 71, where we are told that "the protection of the 1886 Act applies to works published before the date of the Order in Council saving the rights obtained by any lawful previous publication in the United Kingdom, sect. 6." The author has thus omitted to mention that the proviso of the section is only operative when "the rights or interests arising from or in connection with such production are subsisting and valuable at the said date," that is, at the date when the Order comes into force. It may be said that *Moule v. Groenigs* is cited, which was a decision upon that proviso, but, as no particulars of that case are given, we are left to pursue our enquiries elsewhere. Mr. Bewes expresses a consciousness of omissions in his book. We hope that he will take the further step of supplying them in any future edition.

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# Quarterly Digest.

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# Quarterly Digest

OF

## ALL REPORTED CASES,

IN THE

Law Reports, Law-Journal Reports, Law Times  
Reports, and Weekly Reporter,

FOR NOVEMBER, DECEMBER, 1893, AND JANUARY, 1894.

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### Administration:—

- (i.) **C. A.**—*Scotch Judgment—Limitations—Debt Barred in England.*—An administration suit was commenced while a Scotch action was pending against the administratrix on account of a debt which was statute-barred in England. Judgment by default was given in Scotland. The Scotch creditor's claim was disallowed by the chief clerk on the ground of the Statute of Limitations. The administratrix procured the judgment by default to be recalled, and defended the action on the merits. Judgment was given against her, and was registered in England under the Judgment Extension Act, 1868. *Held*, that the Scotch creditor was entitled to the fruits of his judgment when obtained and registered in England, whether or not he would have been restrained from proceeding with the Scotch action after carrying in a proof in the English proceedings, and that he must be admitted a creditor against the assets undistributed. *Held*, also that there was no need to vary the chief clerk's certificate, as the judgment created a new cause of action distinct from the debt upon which the chief clerk had adjudicated.—*Bland v. Low*, 63 L.J. Ch. 60.

### Adulteration:—

- (ii.) **Q. B. D.**—*Food—Disclosure of Alteration—Foods and Drugs Act, 1875, ss. 6, 7, 9.*—A tin of skimmed milk was sold, which was labelled "Condensed Milk." On another part of the label it was stated in smaller print, "This tin contains skimmed milk." *Held*, that the label was a sufficient disclosure of the contents of the tin within the meaning of sect. 9 of the Act.—*Jones v. Davies*, 69 L.T. 497.

- (i.) **Q. B. D.**—*Food*—"Written Warranty"—*Food and Drugs Act, 1875, s. 25.*—In order to constitute the statutable defence of a "written warranty," it is not necessary that word "warrant" or "warranty" should be used in the document relied on; it is sufficient if the document amounts to a warranty in law.—*Laidlaw v. Wilson, L.R. [1894] 1 Q.B. 74; 42 W.R. 78.*

### Appeal :—

- (ii.) **H. T.**—*Question of Law not raised on Record.*—In a Scotch appeal the House of Lords refused to allow the appellant to argue a question of law which was not raised on the record, the appellant having refused to amend his record when given the opportunity in the Court of Session.—*Rixon v. Edinburgh Northern Tramway Co., L.R. [1893] A.C. 636.*

### Arbitration :—

- (iii.) **C. A.**—*Reference of Disputes under Agreement—Power to Construe Agreement—Effect of Award—Subsequent Action.*—The parties had agreed that the plaintiff should supply coal screenings to the defendant. Disputes arose, and were referred to arbitration, with power for the arbitrator to determine the construction of the agreement. The arbitrator awarded that the defendant was bound to keep his works going to receive the screenings, and awarded damages to each party for breaches of the agreement, and found that the disputes had arisen through the wrongful refusal of the defendant to keep his works going. The plaintiff afterwards sued the defendant for refusing to keep his works going, and to receive the screenings. *Held*, that the arbitrator's finding was conclusive in the action as to the construction of the agreement. *Held*, also, that the arbitration and award were no bar to the action, as there had been no renunciation by the defendant of the agreement, treated as a renunciation by the plaintiff, entitling the arbitrator to assess damages on the footing of a rescission of the agreement.—*Gueret v. Andony, 62 L.J. Q.B. 633.*
- (iv.) **Ch. D.**—*Partnership—Action for Dissolution—Return of Premium—Stay of Proceedings—Arbitration Act, 1889, s. 4—Partnership Act, 1890, s. 40.*—In an action for dissolution of partnership the plaintiff claimed the return of his premium. The articles provided for the reference to arbitration of any difference in regard to any matter or thing relating to the partnership or the affairs thereof. The defendant moved to stay proceedings, and to refer the matter to arbitration. *Held*, that under the arbitration clause the arbitrator would have jurisdiction to award a dissolution of the partnership, and the terms on which it should take place, and as one of those terms to award the return of the premium, or part of it; and therefore that the action should be stayed.—*Belfield v. Bourne, 42 W.R. 189.*
- (v.) **Ch. D.**—*Staying Proceedings—"Step in Proceedings"—Arbitration Act, 1889, s. 4.*—A "step in the proceedings," which precludes the party taking it from applying for a stay of proceedings, must be some application to the Court by summons or motion, and does not include an application by letter or notice by one party to the other, or by correspondence between their solicitors, such as a notice given by the defendant that he requires delivery of a statement of claim.—*Ives and Barker v. Williams, L.R. [1894] 1 Ch. 68; 69 L.T. 710.*

### Attachment :—

- (vi.) **P. D.**—*Order to Secure Costs—Undischarged Bankrupt—Weekly Salary—Means.*—The fact that a person is an undischarged bankrupt does not, *per se*, preclude him from being attached for non-compliance with an

order to pay or secure costs. Therefore, where the respondent, an actor, earning a large weekly salary, and an undischarged bankrupt, failed to comply with an order to lodge in Court a sum of £40, or to give a bond with two sureties in the penal sum of £80, to meet the estimated costs of the petitioner, the Court, being satisfied that he could comply with the order, ordered an attachment to issue against him.—*Shine v. Shine*, L.R. [1893] P. 289; 69 L.T. 500.

**Bailment:—**

- (i.) **Q. B. D.**—*Restaurant Keeper—Customer's Coat.*—A person entered a restaurant to dine. A waiter hung up his coat on a hook without being asked to do so, and it was stolen. He sued the restaurant keeper for damages for the loss of the coat. *Held*, that there was evidence to warrant a verdict for the plaintiff on the ground of negligence on the part of the defendant.—*Ullzen v. Nicols*, L.R. [1894] 1 Q.B. 92.

**Banker:—**

- (ii.) **Ch. D.**—*Death of Partner in Bank—Depositors—Liability to—Novation.*—The acceptance by a customer, from a surviving partner in a bank, of a fresh deposit note for the balance of a deposit made with the bank, one of the partners in which is dead, is not sufficient evidence of novation to discharge the estate of the deceased partner.—*Head v. Head*, L.R. [1893] 3 Ch. D. 426; 63 L.J. Ch. 34.

**Bankruptcy:—**

- (iii.) **C. A.**—*Act of Bankruptcy—Bankruptcy Notice—Firm—Infant Partner—Bankruptcy Act, 1883, ss. 4, 5, 6, 9, 110, 115—Bankruptcy Rules, 1886, rr. 260, 262, 264.*—A receiving order was made against the partners in a firm, one of whom was an infant. The act of bankruptcy was the non-compliance with a bankruptcy notice which had been served upon the firm after final judgment had been recovered against the firm under the firm name. *Held*, that the receiving order was bad. If one of the partners in a firm is a person upon whom no valid bankruptcy notice can be served, a receiving order cannot be made against all the partners by serving a bankruptcy notice on the firm.—*E. p. Beauchamp; in re Beauchamp Brothers*, L.R. [1894] 1 Q.B. 1; 69 L.T. 646; 42 W.R. 110.
- (iv.) **C. A.**—*Appeal—Practice—Copy of Notice of Appeal to Registrar—Bankruptcy Rules, r. 132.*—It is a condition precedent to the hearing of an appeal in bankruptcy that a copy of the notice of appeal should be sent to the registrar of the Court appealed from.—*E. p. Vitoria; in re Vitoria*, 42 W.R. 193.
- (v.) **Q. B. D.**—*Fraudulent Preference—Payment after Petition—Protected Transaction—Bankruptcy Act, 1883, ss. 48, 49.*—A payment by a debtor to a creditor after the presentation of a petition against the debtor is not a fraudulent preference, but it may be avoided as being contrary to the policy of the bankruptcy laws. Where the payment is of this nature it will not be protected as a payment made to a creditor who has no knowledge of an act of bankruptcy.—*E. p. The Trustee, in re Badham*, 69 L.T. 366.
- (vi.) **Q. B. D.**—*Proof—Alimony—Arrears.*—Arrears of alimony payable by a debtor to his wife under an order of the Probate Division, which became due after a receiving order had been made against the debtor, cannot be proved for in the bankruptcy.—*E. p. Hawkins; in re Hawkins*, L.R. [1894] 1 Q.B. 25; 42 W.R. 202.

- (i.) **Q. B. D.**—*Proof—Interest on Mortgage—Transfer of Estates of Mortgagor and Mortgagee—Arrears of Interest.*—A mortgagor assigned his equity of redemption, and the estate of the two mortgagees was transferred so that it vested in one of them alone. The assignee of the equity of redemption paid interest on the mortgage, and when sued for arrears suffered judgment by default. He became bankrupt, and the transferee of the mortgage sought to prove for further arrears. *Held*, that he could not do so as there was no privity of contract between him and the assignee of the equity of redemption, and no personal liability on the part of the latter to pay interest.—*E. p. Mason; in re Errington*, L.R. [1894] 1 Q.B. 11.
- (ii.) **C. A.**—*Proof—Loan to Trader—Interest varying with Profit—New Agreement—Partnership Act, 1890, ss. 2, 3.*—Decision of Q. B. D. (see Vol. 19, p. 2, iv.) reversed.—*E. p. The Trustee; in re Hildesheim*, L.R. [1898] 2 Q.B. 357; 69 L.T. 550; 42 W.R. 188.
- (iii.) **Q. B. D.**—*Proof—Interest—Bankruptcy Act, 1890, s. 23.*—Where the debt for which a creditor seeks to prove consists of a principal sum and interest at a rate exceeding five per cent., he may allocate any security which he may hold to the payment of the interest, or any part thereof, and prove for any principal sum remaining over.—*E. p. Discount Banking Co.; in re Fox and Jacobs*, 69 L.T. 657.
- (iv.) **C. A.**—*Security for Costs—Foreign Creditor—Appeal by.*—In bankruptcy proceedings governed by the Act of 1869 and the rules made under it, where a foreign creditor resident abroad appeals against the rejection of his proof by the trustee, the Court ought not, as a matter of course, to exercise its discretion by ordering the creditor to give security for costs. The order ought only to be made in peculiar or extreme cases.—*E. p. Paget, in re Semenza*, L.R. [1894] 1 Q.B. 15; 69 L.T. 708.
- (v.) **Q. B. D.**—*Small Bankruptcy—Summary Administration—Other Remedy against Debtor—Bankruptcy Act, 1883, s. 122, sub-s. 5.*—Where an order has been made for summary administration of a debtor's estate the county court has no power to give leave to the creditor to issue execution against the debtor's property.—*In re Frank*, L.R. [1894] 1 Q.B. 9.
- (vi.) **C. A.**—*Trustee's Accounts—Deed of Arrangement—Prior to 1890—Bankruptcy Act, 1890, s. 25, sub-s. 2 (b)—Deeds of Arrangement Rules, 1890, rr. 7, 16, forms 2, 3, 6.*—The trustee of a deed of arrangement dated prior to January 1st, 1891, is not required to send to the Board of Trade an account of his receipts and payments as such trustee prior to that date. *Quære*, whether he is required to send in any account at all of his receipts and payments.—*E. p. Board of Trade; in re Norman*, L.R. [1893] 2 Q.B. 869; 63 L.J. Q.B. 34; 69 L.T. 675.

See Landlord and Tenant, p. 47, ii.

### Bill of Sale:—

- (vii.) **Ch. D.**—*Charge on Machinery—Tenant's Fixtures—Interest in Land—Statute of Frauds.*—A dock company obtained an advance from a bank to enable them to purchase machinery, which was to be assigned as security for the advance, but no assignment was made. The machinery was let to a seed company with an option of purchase, and the dock company gave the bank a document whereby they undertook to hand over to the bank the payments made for the machinery. Certain payments were accordingly handed over to the bank until the failure of the seed company. The bank obtained an advance from P. on the security of a memorandum of charge not sufficient to satisfy the Statute of Frauds, and not registered as a bill of sale. A decree was made for accounts of the property of the bank on the death of one of

the partners, and a receiver was appointed. The dock company owed the bank a large sum, and paid the receiver a considerable sum as interest. *Held*, that P. was not entitled to the sum so paid as interest, as the machinery was an interest in land within the Statute of Frauds, so far as it consisted of tenant's fixtures, and was within the Bills of Sale Acts so far as it consisted of personal chattels, so that P. had not obtained a valid charge upon it.—*Jarvis v. Jarvis*, 63 L.J. Ch. 10; 69 L.T. 412.

- (i.) **C. A.**—*Receipt from Sheriff—Assurance—Bills of Sale Acts*, 1878, s. 4; 1882.—Decision of Q. B. D. (see Vol. 18, p. 110, v.) affirmed.—*E. p. Burgess; in re Hood*, 42 W.R. 23.

### Building Society:—

- (ii.) **Q. B. D.**—*Alteration of Rules—Registration—Retrospective—Building Societies Act*, 1874, ss. 14, 18, 32.—A building society altered its rules so as to apply certain regulations which were then made to all withdrawals of which notice had been given before the date of the resolution altering the rules; one of the regulations provided that in case of the dissolution of the society, withdrawing members whose notices had expired should lose their priority. The registrar refused to register the alteration on the ground that it was retrospective in operation. *Held*, that the registrar was bound to register it, his duty being confined to considering whether the rules were bad or not for non-conformity with the terms of the Act.—*Reg. v. Brabrook*, 69 L.T. 718.

### Burial Ground:—

- (iii.) **Ch. D.**—*Building—Band Stand.—Held*, that a metropolitan vestry in building a band stand in a disused burial ground were acting *ultra vires*, and must be restrained by injunction.—*Attorney-General v. St. Pancras Vestry*, 69 L.T. 627.
- (iv.) **Ch. D.**—*Disused—Building on—Metropolitan Open Spaces Act*, 1881, s. 1—*Open Spaces Act*, 1887, s. 4—*Disused Burial Grounds Act*, 1884 s. 8.—In 1842 a piece of land was conveyed to a burial company, and part thereof was used for interments. In 1878 an Order in Council closed the cemetery. In 1885 a wall was built cutting off a part which had not been used for interments. In 1890 another Order in Council closed the cemetery except the unused part. This was contracted to be sold for building. *Held*, that the unused part had been "set apart for interments," and was now a "disused burial ground," and could not be used for building under the Act of 1884.—*Ponsford v. Newport District School Board*, 69 L.T. 687; 42 W.R. 154.

### By-Law:—

- (v.) **Q. B. D.**—*Validity—Uncertainty—Justices—Jurisdiction—Weights and Measures Act*, 1889, s. 28.—A county council published a by-law requiring the person in charge of every vehicle carrying coal for sale or delivery to carry a weighing machine of "a form approved." *Held*, that the by-law was not vague or invalid for uncertainty, and that justices who had refused to convict of an offence under it, had exceeded their jurisdiction in entertaining the question of vagueness or uncertainty of language.—*Martin v. Clarke*, 62 L.J. M.C. 178.

### Charity:—

- (vi.) **Ch. D.**—*Mortmain—Interest in Land.*—Decision of Ch. D. (see Vol 18, p. 72, i.) affirmed.—*Forbes v. Hardcastle*, 69 L.T. 425.

- (i.) **C. A.**—*Mortmain—Mortmain and Charitable Uses Act, 1891—Will before Act—Death of Testator after Act.*—Decision of Ch. D. (see Vol. 18, p. 32, ii.) affirmed.—*Brompton Hospital v. Lewis*, 42 W.R. 179.

### Colonial Law;—

- (ii.) **P. C.**—*Canadian Act, 24 Vict., c. 83—Construction.*—A railway company was authorised by Act of the legislature to construct a railway on the streets of a city, which was authorised to grant an exclusive privilege for that purpose upon such conditions and for such period as might be agreed upon. By certain resolutions, an agreement, and a by-law, such privilege was limited to thirty years. *Held*, that the Act could not be construed as granting a perpetual privilege, but that the privilege was limited to thirty years; and that the limit of time applied to all extensions of the railway authorised in pursuance of the same privilege.—*Toronto Street Railway Co. v. Corporation of Toronto*, L.R. [1898] A.C. 511; 63 L.J. P.C. 10.
- (iii.) **P. C.**—*Jersey—Principal Heir—Representation.*—The enactments of 1851 and 1873, by which representation in regard to personal and acquired real estate was introduced into the law of succession in Jersey in the case of collaterals, are to be taken as referring to the whole estate and succession of the deceased, not as introducing any limited right of representation; and therefore the granddaughter of an elder sister is to be preferred to the son of a younger sister as "principal heir," and as such is entitled to the "saisine" of the personal estate and acquired real estate of the deceased.—*De Quetteville v. Haman*, L.R. [1893] A.C. 502; 69 L.T. 501.
- (iv.) **P. C.**—*New South Wales—Real Property Acts, 26 Vict., No. 9; 41 Vict., No. 18—Caveators in Possession—Onus Probandi.*—Where an applicant, desiring to bring land within the Acts, shewed a complete documentary title, and that he was in possession within twenty years before his application; *held*, that caveators in possession had the onus to show that the applicant's title had been defeated; that is, that his entries on the land had been ineffective, either from not having been made *animo possidendi*, or from having been made after his title had been extinguished.—*Solling v. Broughton*, L.R. [1893] A.C. 556.
- (v.) **P. C.**—*Nova Scotia—County Incorporation Act, 1879—Construction—Non-feasance—Damages.*—Public corporations, to which an obligation to repair public roads and bridges has been transferred, are not liable to an action in respect of mere non-feasance, unless the legislature has shown an intention to impose such liability on them. *Held*, that there was indication of such an intention in the above-mentioned Act.—*Municipality of Pictou v. Geldert*, L.R. [1893] A.C. 524; 69 L.T. 510; 42 W.R. 114.
- (vi.) **P. C.**—*Ontario Municipal Act, 1887—Construction.*—An action for damages may be brought against a municipality for non-performance of the statutory duty of maintaining drainage works without notice, though notice in writing is required as a condition precedent to an action for a mandamus. An action for damages to the plaintiff's land, *held* to be maintainable so far as the injury was caused by the municipal drain being out of repair, or not being in such a state as to carry off from the plaintiff's land all the water which could carry off as originally constructed. But, *held*, that so far as the injury was caused by the negligent construction by the municipality under its powers of another drain, the action must be dismissed, the remedy being by arbitration under the statute.—*Corporation of Raleigh v. Williams*, L.R. [1898] A.C. 540; 63 L.J. P.C. 1; 69 L.T. 506.

- (i.) **P. C.**—*Trinidad and Tobago*—*Magistrate—Jurisdiction*.—The local ordinances 4 of 1889 and 11 of 1891, have not the effect of erecting the stipendiary magistrate into a tribunal competent to try title. Therefore in an action to try title to land, an order of the Supreme Court quashing such magistrate's conviction of the defendant for trespass on land will not sustain a plea of *res judicata*. The magistrate having no jurisdiction to decide an issue of title, the Supreme Court sitting in appeal from him could not exercise a jurisdiction which he did not possess.—*Attorney-General for Trinidad and Tobago v. Eliche*, L.R. [1893] A.C. 518; 63 L.J. P.C. 6; 69 L.T. 505.

**Company:—**

- (ii.) **Ch. D.**—*Public Undertaking—Debentures—Receiver and Manager*.—A receiver and manager was appointed of the undertaking of a tramway company in an action by debenture-holders.—*Bartlett v. West Metropolitan Tramways Co.*, L.R. [1893] 3 Ch. 437; 69 L.T. 560.
- (iii.) **C. A.**—*Railway Stock—Issue at a Discount—Debentures—Issue at a Discount—Companies Clauses Consolidation Act, 1845—Companies Clauses Acts, 1863, s. 21; 1869, s. 5—Railway Companies Act, 1867, s. 27*.—A company governed by the Companies Clauses Act, 1845, and the Acts amending it, may issue fully paid-up original stock at a discount, and for payment in cash, or other consideration, subject to the liability of the directors for issuing the stock below its value without necessity. *Quere*, whether such a company can issue at a discount stocks subject to the payment of calls. Such company may also issue debentures or debenture stock at a discount, if authorised to raise money by mortgages or debentures. An agreement between a railway company and its bankers, to issue to them paid-up stock and debentures at a discount, in consideration of an advance of money, *held*, under the circumstances to be valid and reasonable.—*Webb v. Shropshire Railway Co.*, L.R. [1893] 3 Ch. 307; 69 L.T. 533.
- (iv.) **H. L.**—*Shares—Certificate—No Title in Transferor—Estoppel*.—Decision of C. A. (see Vol. 17, 9, 1.) affirmed.—*Balkis Consolidated Co. v. Tomkinson*, L.R. [1893] A.C. 396; 69 L.T. 598; 42 W.R. 204.
- (v.) **C. A.**—*Shares—Issue as Paid-up—Contract—Consideration—Companies Acts, 1862, s. 38, sub-s. 4; 1867, s. 25*.—Decision of Ch. D. (see Vol. 19, 6, v.) affirmed.—*In re Eddystone Marine Insurance Co.*, 69 L.T. 368.
- (vi.) **Ch. D.**—*Voluntary Liquidation—Calls on Shares—Powers of Sale and Forfeiture—Exercise of—Directors Dead*.—By the articles of a company the powers of selling and forfeiting shares were vested in the directors. The company was wound-up voluntarily in 1875, and all the then debts were paid. Calls were made on the shares for the purpose of paying chief rents on building land, the property of the company. Some of the calls were not paid, and the liquidators desired to forfeit the shares of the non-paying shareholders. All the directors were dead. *Held*, that a general meeting duly summoned could elect a new board of directors to exercise the powers of sale and forfeiture.—*In re Fairbairn Engineering Co., ex p. Ladd*, L.R. [1893] 3 Ch. 450; 63 L.J. Ch. 8; 69 L.T. 415; 42 W.R. 155.
- (vii.) **Ch. D.**—*Winding-up—Contributories—Costs—Assets Deficient—Priority*.—The Court had ordered the names of the applicants to be struck off the list of contributories, and ordered the liquidator to pay the applicants their costs out of the assets, and that the liquidator should be allowed his costs, and what he should so pay the applicants, out of the assets. The liquidator admitted assets, but insufficient to pay the taxed costs of the applicants, and the liquidator's costs of the winding-up.



On summons by the applicants for payment of their costs. *Held*, that the liquidator must pay the costs of the applicants and of the summons out of the assets after deducting only the costs of realisation; but that, if the liquidator so desired, an account would be directed of the assets remaining after deducting the costs of realisation.—*In re Staffordshire Gas and Coke Co.*, L.R. [1893] 3 Ch. 523; 63 L.J. Ch. 68; 69 L.T. 376.

- (i.) **C. A.**—*Winding-up—Contributory—Vendor's Shares—Contract—Estoppel—Companies Acts*, 1862, ss. 23, 74; 1867, s. 25.—A company agreed to purchase a business, part of the consideration being the issue to the vendors or their nominees of forty founders' shares fully paid up. The contract for the purchase was not registered. Certificates of founders' shares were sent to the vendors' nominees, with a letter from the secretary of the company, stating that the acceptance of the shares would impose no liability on the recipients. The recipients acknowledge the receipt by letter, containing no qualification or condition. The shares were, in fact, never allotted. The company was wound-up, and the liquidator settled the recipients on the list of contributories for the whole amount of the founders' shares. *Held*, that as the names of the recipients had not been entered on the list of shareholders, they could not be made contributories unless they had contracted to take shares, or had by their conduct estopped themselves from denying that they were shareholders; that no such contract or estoppel had been proved, and that they must be removed from the list of contributories.—*E. v. Phillips*; *in re Macdonald & Co.*, 69 L.T. 567.
- (ii.) **Ch. D.**—*Winding-up—Charges of Fraud—Outside Public—Examination—Companies (Winding-up) Act*, 1890, s. 8, sub-s. (3).—The section above mentioned does not apply to a case where charges are made against a company of having, in the course of its business, committed frauds on the outside public only, and not in any way connected with the promotion or formation of the company.—*In re Medical Battery Co.*, 42 W.R. 191.
- (iii.) **Q. B. D.**—*Winding-up—Report of Official Receiver—Suggestion of Fraud—Companies Act*, 1890, s. 8, sub-ss. 2, 3.—A suggestion of fraud, in the promotion or formation of a company, made by the official receiver in his report, is sufficient to support an order for the examination of the promoters and directors, although the report contains no direct charge of fraud.—*In re Birkdale Steam Laundry Co.*, L.R. [1893] 2 Q.B. 386; 63 L.J. Q.B. 20; 42 W.R. 144.
- (iv.) **C. A.**—*Winding-up—Debenture-holders' Action—Exceptional Assets—Realisation*.—Where, after the presentation of a winding-up petition, an action was commenced by debenture-holders to realise their security, and after a winding-up order having been made, the assets pledged to the debenture-holders were of such a nature that they could not be easily and conveniently realised by an official of the Court, or by anyone who was not specially conversant with these exceptional assets, the Court appointed a receiver on behalf of the debenture-holders of these particular securities, and left the official receiver in the winding-up to be the receiver of all the other assets.—*Industrial and General Trust v. South American and Mexican Co.*, 69 L.T. 693; 42 W.R. 181.
- (v.) **Ch. D.**—

is sanctioned it is not necessary to insert a reservation of the rights of sureties for the company's debts, or to insert in the order sanctioning the scheme—at any rate, in a winding-up by or under supervision of

the Court—of any express words staying proceedings by creditors, or discharging contributories from further liability than that imposed by the scheme. Where the scheme contemplates the formation of a new company, the shares in which are to be taken by the shareholders in the old company as not fully paid-up, the Court may require the insertion in the memorandum of association of the new company of a clause preventing the shareholders from escaping liability by transferring their shares.—*In re London Chartered Bank of Australia*, L.R. [1893] 3 Ch. 540; 62 L.J. Ch. 841; 69 L.T. 593; 42 W.R. 14.

### Compulsory Purchase:—

- (i.) **Ch. D.**—*Public Body—Special Act—Payment in—Costs—Jurisdiction—Supreme Court of Judicature Act, 1890, s. 5.*—Where an Act enabling a public body to take land compulsorily contains no provision as to payment out of Court of money paid in under the Act, the Court has jurisdiction to order the public body to pay the costs of and incidental to a petition for payment out.—*In re Fisher*, L.R. [1894] 1 Ch. 63; 63 L.J. Ch. 71.

### Contract:—

- (ii.) **P. C.**—*Negotiation by Telegram—Incompleteness.*—A telegraphed "Will you sell us B.H.P. ? Telegram lowest cash price." X. telegraphed in reply, "Lowest price for B.H.P. £900." A. telegraphed "We agree to buy B.H.P. for £900 asked by you. Please send us your title deed in order that we may get early possession." There was no answer. *Held*, that there had never been any offer by X., and that the last telegram was not an acceptance, but an offer to buy, which had not been accepted, and that there was no contract.—*Harvey v. Facey*, L.R. [1893] A.C. 552; 62 L.J. P.C. 127; 69 L.T. 504; 42 W.R. 129.
- (iii.) **C. A. & Q. P. D.**—*Statute of Frauds, s. 4—Indemnity*—A term in a contract of agency, under which the agent becomes liable to indemnify his principal against loss arising from the non-payment of the debts of other persons, is not "a special promise to answer for the debt, default, or miscarriage of another person," and need not be in writing.—*Sutton & Co. v. Grey*, 69 L.T. 354 and 673; 42 W.R. 195.
- (iv.) **Q. B. D.**—*Theatrical Engagement—Breach of—Negative Stipulation—Injunction.*—The defendant agreed to act and to understudy as a member of the plaintiff's theatrical company for a certain period, subject to certain rules, one of which was that no member of the company should act at any other theatre without permission. The plaintiff produced a play, in which the defendant was not given a part, but was called on to understudy. The defendant asked the plaintiff to cancel the engagement, and on this being refused, began to act elsewhere. The plaintiff sued for an injunction. The defendant alleged that the plaintiff had promised him certain parts, but had failed to keep his promise. *Held*, that the alleged verbal promise could not, in the absence of anything showing want of good faith on the plaintiff's part, be taken into consideration in construing the agreement, that the allotting of parts to the defendant was no part of the consideration, that the plaintiff had not failed to carry out the contract, and that the defendant ought to be restrained from acting except at a theatre where the plaintiff's company was playing.—*Grimston v. Cunningham*, L.R. [1894] 1 Q.B. 125.

### Conversion:—

- (v.) **C. A.**—*Money to be Invested in Land—Devise of Land.*—Money arising from the sale under a power of settled lands in Staffordshire was directed by the settlement to be re-invested in land. C. was tenant

for life, with remainder to his sons successively in tail, with remainder to himself in fee. He died without issue, having devised his Staffordshire lands to X., and his residuary real and personal estate to Y. *Held*, that the money was to be regarded as land, and that, as under the trust it might have been invested in land in any county, it would not pass under the devise of the Staffordshire land, but under the residuary devise.—*In re Duke of Cleveland's Settled Estates*, L.R. [1893] 3 Ch. 244.—*Barnard v. Wolmer*, 62 L.J. Ch. 955.

### County Court:—

- (i.) **Q. B. D.**—*Appeal—Fine for Assault on Bailiff*—“*Matter*”—*County Courts Act*, 1888, ss. 48, 120, 186.—*Seem*, that a proceeding in respect of which there is a form of summons given in the forms appended to the county court rules is a “*matter*” within sect. 186, although there is no rule prescribing how it shall be commenced. *Held*, that there is no appeal from the order of a county court judge imposing a fine for an assault upon the bailiff of the Court, while in the execution of his duty.—*Lewis v. Owen*, L.R. [1894] 1 Q.B. 102.
- (ii.) **Q. B. D.**—*Appeal—Interlocutory Matters—Taxation—County Courts Act*, 1888, ss. 120, 121, 122.—There is a right of appeal from a county court to the high court in all interlocutory matters, including questions of taxation.—*Gilson and Sons, v. Kilner*, 69 L.T. 310.
- (iii.) **C. A.**—*Jurisdiction*—“*District in which the Cause of Action wholly or in Part arose*”—*Non payment for Goods—County Courts Act*, 1888, s. 74.—An action was commenced in the Bath county court for the price of goods sold and delivered by the plaintiff, who carried on business in Bath, under a contract made in Essex with the defendant, who resided in Essex. *Held*, that non-payment of the price was part of the cause of action, that the price ought to have been paid in Bath, and that the Bath county court had jurisdiction.—*Northey Stone Co. v. Gidney*, L.R. [1894] 1 Q.B. 99; 42 W.R. 99.
- (iv.) **C. A.**—*Practice—Default Summons—Service out of Jurisdiction—Form of Affidavit*.—In applying for leave to issue a default summons in a county court for service out of the jurisdiction to recover a claim exceeding £5, the affidavit in support of the application need not state that the defendant does not follow any of the occupations specified in Order 5, rule 10, of the County Court Rules, 1889.—*Gordon v. Evans*, 42 W.R. 193.  
See *Replevin*, p. 57, *ii*.

### Covenant:—

- (v.) **Ch. D.**—*Restrictive—Building Estate—Acquiescence—Breaches by Plaintiff*.—Lots forming parts of a building estate were subject to covenants that no buildings thereon should be used as a shop, workshop, or factory, and that no trade or manufacture should be carried on on any lot. W. had, since 1886, carried on the business of a laundryman on one of the lots. In 1898 he began to erect on one of the lots a building adapted solely for his business. The plaintiff moved to restrain him. It was shown that all the buildings on the estate were private residences, but that trades had been openly carried on in some of them. The plaintiff had committed breaches of the covenant on his own lot, of an unimportant nature. *Held*, that the defendant had committed a breach of the covenant; that such breach was greater and more serious than any previously committed; and that the plaintiff was entitled to an injunction.—*Meredith v. Wilson*, 69 L.T. 336.

**Domicil:—**

- (i.) **Ch. D.—Infant—Fatherless—Change of Mother's Domicil.**—The change of the domicil of a fatherless infant which may result from the change of the mother's domicil, is not the necessary consequence of the change of the mother's domicil, but is the consequence of her exercise of a power vested in her for the welfare of the infant, which power she may abstain from exercising though she changes her own domicil. Therefore where a Scotch widow married a second time, and, on going to reside permanently in England, left one of her children in Scotland with an aunt, with whom she had resided since her father's death: *Held*, that the domicil of such child was not changed.—*In re Beaumont*, L.R. [1893] 3 Ch. 490; 62 L.J. Ch. 923; 42 W.R. 142.

**Easement:—**

- (ii.) **Ch. D.—Light—Prescription—Lease—Reservation.**—The plaintiff was lessee from X. of houses on one side of a street. X. owned houses on the other side of the street. The plaintiff's lease provided that the "lessors" should be at liberty to deal with any premises "adjoining or contiguous" to the demised premises, in any manner they should think fit, and to erect any buildings thereon, whether such buildings should or should not diminish the light and air enjoyed by the demised premises. The lease provided that the word "lessors" should include X. and his assigns. No alteration was made in the houses opposite to the plaintiff's premises for more than twenty years. After that time the defendant under an agreement with X., began to erect new buildings on the site of such houses which obstructed the plaintiff's lights. *Held*, that the above-mentioned clause in the lease prevented the plaintiff from acquiring a right to light by twenty years' enjoyment; that the opposite houses were "adjoining or contiguous" to the plaintiff's premises, as the lease and agreement respectively passed the street *usque ad medium filum viæ*, and that the defendant was an "assign" of X. under the provision in the lease. *Held*, therefore that the defendant was entitled to obstruct the plaintiff's light.—*Haynes v. King*, L.R. [1893] 3 Ch. 439; 63 L.J. Ch. 21.
- (iii.) **Ch. D.—Light and Air—Damages—Injunction.**—In an action for an injunction to restrain interference with light and air, and for damages, where it was proved that the injury to the plaintiff's light and air was trifling, *held*, that where the injury to the plaintiff's rights was substantial, and there was no imperfection in his title (as by laches), nor any other special circumstances, the proper remedy was injunction, but that where the injury was small, the Court would in its discretion grant damages instead of an injunction. Judgment for £120 damages for actual and prospective interference, and costs.—*Martin v. Price*, 69 L.T. 712.

**Ecclesiastical Law:—**

- (iv.) **C. A.—Pews—Title—Prescription.**—Decision of Q. B. D. (*see* Vol. 18, p. 115, iii.) affirmed. *Held*, also, that the action ought not to have been entertained at all, it being an abuse of the process of the Court to ask for an injunction to restrain the defendants from acting under a faculty which had not yet been obtained.—*Proud v. Price*, 69 L.T. 664, 42 W.R. 102.

**Evidence:—**

- (v.) **P. D.—Privilege—Conversation with Clergyman.**—In a divorce suit by the husband it appeared that after the discovery of an alleged act of adultery by the respondent, she had a conversation with a clergyman,

who was called as a witness on behalf of the petitioner. He objected on the ground of privilege to disclose the conversation or anything that took place at the interview. *Held*, that the objection could not be sustained.—*Normanshaw v. Normanshaw*, 69 L.T. 488.

### Executor:—

- (i.) **Ch. D.**—*Assent to Legacy—Mortgage*.—The mere fact that an executor has made general payments to or for the benefit of a legatee of leaseholds and other property, not specially out of or on account of the rents, is not sufficient to enable the Court to infer that the legacy has been assented to. An executor is not entitled, on behalf of the estate, to take shares in a building society, or to make the estate liable for him as a shareholder therein; but a mortgage by an executor to a building society, though made to secure all moneys becoming due from him as a shareholder, as well as the money advanced and interest, is not wholly void, but is good to the extent of the money advanced and reasonable interest, provided the advance was made in good faith to the executor in that capacity.—*Thorne v. Thorne*, L.R. [1898] 3 Ch. 196; 68 L.J. Ch. 38; 69 L.T. 378.
- (ii.) **C. A.**—*Devastavit—Payment of Debt—Statute-barred*.—Decision of Ch. D. (see Vol. 19, p. 10, *in.*) affirmed.—*Midgley v. Midgley*, L.R. [1898] 3 Ch. 282

### Factor:—

- (iii.) **Ch. D.**—*Pledge—Validity*—5 & 6 Vict., c. 39.—In 1887 T. entrusted A. with a picture for sale. A. was a dealer in drawings and etchings, and occasionally sold pictures on commission. He deposited the picture with B., in substitution for certain drawings, as security for a loan. B. died, and A. became insolvent. T. sued B.'s executors for the recovery of the picture. *Held*, that A. was an agent "intrusted with the possession of goods," that the pledge was valid, and that B.'s estate was entitled to a charge on the picture for the amount of the loan.—*Tremouille v. Christie*, 69 L.T. 388.

### Friendly Society:—

- (iv.) **C. A.**—*Rules—Arbitration—Validity of Award—Irregularity—Justices Jurisdiction—Friendly Societies Act, 1875, s. 22 (d)*.—*Held*, reversing the decision of Q. B. D. (see Vol. 19, p. 11, *i.*) that as the arbitrators had given a decision which was valid until set aside, the justices had no jurisdiction to hear the case.—*Bache v. Billingham*, L.R. [1894] 1 Q.B. 107; 63 L.J. M.C. 1; 69 L.T. 648.

### Highway:—

- (v.) **C. A.**—*Extraordinary Traffic—Excessive Weight—Highways and Locomotives Act, 1878, s. 23*.—Decision of Q. B. D. (see Vol. 19, p. 11, *iii.*) affirmed.—*Etherley Grange Coal Co. v. Auckland District Highway Board*, L.R. [1894] 1 Q.B. 37; 69 L.T. 702; 42 W.R. 198.
- (vi.) **C. A.**—*Extraordinary Traffic—Highways and Locomotives Act, 1878, s. 23*.—"Extraordinary traffic" as distinct from "excessive weight" includes such continuous or repeated user of the roads by a person's vehicles as is out of the common order of traffic, and as may be calculated to damage the road and increase the cost of repair. It is a carriage of articles over the road, at either one or more times, which is so exceptional in the quality or quantity of articles carried, or in the mode or time of user of the road, as substantially to alter and increase the burden imposed by ordinary traffic, and thereby to

cause damage beyond what is common. The mere user of the road by one person more than others does not constitute "extraordinary traffic," the traffic must be extraordinary as regards the ordinary user of the road by all who use it, and not merely large as regards the traffic put on it by other persons.—*Hill v. Thomas*, L.R. [1893] 2 Q.B. 233; 69 L.T. 539; 42 W.R. 85.

- (i.) **C. A.**—*Non-Repair of—Projection of Sewer Grating—Liability of Local Authority—Public Health Act, 1875, ss. 13, 16, 19, 144, 149.*—Owing to the non-repair of a highway by the defendants, owing to which the surface of the road had become worn away, the iron sewer grating, which had been lawfully and properly fixed in the highway by the defendants, who had the control of the sewers, projected above the surface of the highway, and the plaintiff thereby suffered injury. *Held*, that as the accident was caused solely by the non-repair of the highway, the defendants were not liable; and that the fact that they had control of the sewers as well as of the highway did not render them liable.—*Oliver v. Horsham Local Board; Thompson v. Mayor and Corporation of Brighton*, 42 W.R. 161.

### Husband and Wife:—

- (ii.) **Ch. D.**—*Ante-Nuptial Agreement—Wife's Reversionary Chose in Action—Election to Confirm Settlement*—A husband had entered into an ante nuptial agreement for the settlement of the wife's property, including a policy of insurance to which she was entitled under an instrument made before Malins's Act. A memorandum of the agreement was signed by the husband alone, and the settlement was executed by him alone. By a subsequent deed, acknowledged by the wife, the policy was assigned to the trustees of the settlement. She afterwards, in exercise of a power in the settlement, mortgaged the policy. *Held*, that the wife by acting on the contract had elected to confirm the settlement, and was bound to perform the contract fully, and that the mortgage was therefore valid.—*Greenhill v. North British and Mercantile Insurance Co.*, L.R. [1893] 3 Ch. 474; 62 L.J. Ch. 918; 69 L.T. 526; 42 W.R. 91.
- (iii.) **P. D.**—*Post-nuptial Settlement—Petition to Vary—Allowance Reduced.*—The petitioner and his wife separated under a deed by which the petitioner allowed his wife £200 a year, without any *dum casta* clause. He afterwards found that she was living with the co-respondent. He obtained a decree for divorce. Upon petition to vary the settlement, *held*, that the allowance should be reduced to £100 a year, to be payable to the respondent only *dum sola et casta vixerit*.—*Saunders v. Saunders*, 69 L.T. 498.
- (iv.) **C. A.**—*Desertion—Alimony—Married Women (Maintenance in Case of Desertion) Act, 1886, s. 1.*—Decision of Q. B. D. (see Vol. 19, p. 11, v.) affirmed.—*Chudley v. Chudley*, 69 L.T. 617.
- (v.) **P. D.**—*Divorce—Alimony and Costs—Receiver.*—On an *ex parte* application by the petitioner, the wife, the Court made an order for a receiver until next motion day, limited to receiving from the respondent's bankers the amount due to the petitioner for alimony and costs, the petitioner undertaking to be liable in damages in case the receivership should be set aside.—*Angliss v. Angliss*, 69 L.T. 462.
- (vi.) **C. A.**—*Divorce—Condonation—Damages—Costs—20 and 21 Vict., c. 85, ss. 29, 30, 31, 51, 59.*—Where a husband condones his wife's adultery with a particular man, such condonation is not affected by the fact that she has also committed adultery with other men, of which he is ignorant. When a husband has condoned his wife's adultery with a particular man, he cannot recover damages against that man. The

costs of all petitions, whether they claim damages or not, are in the discretion of the Court, and on this point there is no appeal. A wife committed adultery with A. and B. Her husband condoned the adultery with A., being ignorant of that with B. He afterwards petitioned for divorce, making A. and B. co-respondents. Damages were claimed only against A. A decree nisi for divorce, with costs, was granted against B. *Held*, that the husband could not obtain a decree on the ground of the adultery with A., or obtain damages against him, and that the petition against him could be dismissed with costs.—*Bernstein v. Bernstein*, L.R. [1893] P. 292; 63 L.J. P. 3; 69 L.T. 513.

- (i.) **P. D.—Divorce—Incestuous Adultery—Acquittal of Husband on Criminal Charge of Rape—Evidence.**—On a wife's petition charging her husband with incestuous adultery with his own child, it appeared that a jury in a criminal court had acquitted him of the charge of rape, but had convicted him of an attempt to carnally know the child. The Court, notwithstanding the certificate of conviction, allowed evidence to prove that incestuous adultery had taken place, and pronounced a decree of divorce.—*Virgo v. Virgo*, 69 L.T. 460.
- (ii.) **P. D.—Divorce—Intervention of Queen's Proctor—Resumption of Cohabitation—Decree Rescinded.**—The petitioner had obtained a decree nisi for divorce on account of his wife's adultery. His solicitors afterwards informed the Queen's Proctor that he had forgiven his wife, and that he should not take steps to have the decree made absolute. The Court, on affidavits by the parties that they were living together again, rescinded the decree nisi without requiring the Queen's Proctor to file a formal plea.—*Flower v. Flower*, L.R. [1893] P. 290; 42 W.R. 204.
- (iii.) **P. D.—Divorce—Intervention—Charge of Adultery—Application by Person Charged to Intervene**—41 Vict., c. 19, s. 2.—The wife having obtained a decree nisi, the Queen's Proctor intervened, charging her with adultery with X. X took out a summons asking for leave to intervene. The summons was dismissed.—*Grieve v. Grieve*, L.R. [1893] P. 288; 69 L.T. 462.
- (iv.) **C. A.—Divorce—Queen's Proctor—Intervention of—Previous Findings—Estoppel.**—Decision of P. D. (see Vol. 18, p. 117, v.) affirmed.—*Butler v. Butler*, 63 L.J. P. 1; 69 L.T. 545.
- (v.) **P. D.—Divorce—Maintenance—Post-Nuptial Settlement—Order in Excess of Amount allotted by Settlement.**—The wife, who had obtained a decree of divorce, petitioned for permanent maintenance. By post-nuptial deeds, made apparently in consideration of the abandonment of former proceedings, she was to receive an allowance of £100 a year in the event of the husband's adultery or cruelty. His income was £600 a year. *Held*, that notwithstanding the deeds, she was entitled to permanent maintenance at the rate of £200 a year.—*Wilkinson v. Wilkinson*, 69 L.T. 459.
- (vi.) **C. A.—Divorce—Maintenance—Matrimonial Causes Act, 1857, s. 32.**—The Court may, before a decree for divorce has been made absolute, confirm the registrar's report approving of maintenance for the wife, order the husband to secure the maintenance on the decree becoming absolute, and in the meantime restrain him from dealing with his property so as not leave sufficient security.—*Waterhouse v. Waterhouse*, L.R. [1893] P. 284; 62 L.J. P. 115; 69 L.T. 618.
- (vii.) **P. D.—Divorce—Variation of Settlements—Petition for—Amendment after Time expired—Second Marriage of Respondent.**—A wife obtained a decree of divorce. There was an ante-nuptial settlement in 1877 of the wife's property, and a post-nuptial settlement in 1878 of the husband's property. By the latter deed the respondent took the first

life interest subject to an annuity to the petitioner till her death or re-marriage, and after his death the property was to go to his children by the petitioner or any future wife as he should appoint, and in default of appointment it was to be divided amongst his children by any marriage. He had also power to raise a sum by mortgage of his life interest, and to appoint the income after his death to any future wife, and to appoint new trustees. He married again after the decree absolute, after executing a settlement on his second wife, and exercising his power of appointment under the settlement of 1878 in favour of his children by her, to the exclusion of the children of the first marriage. The wife petitioned for variation of the settlement of 1877, and amended the petition, after the time for petitioning had expired, by including the settlement of 1878. The respondent had become a bankrupt, and his life interests under the settlements had been sold with notice of the divorce proceedings. *Held*, that his interest under the settlement of 1877 should be extinguished, and that his powers of appointment under the settlement of 1878 should be extinguished to the extent of leaving the children of the first marriage to take as if there had been a default of appointment, this extinction to operate only during the petitioner's life or until she should marry again.—*Nevill v. Nevill*, 69 L.T. 463.

- (i.) **P. D.**—*Divorce—Wife's Petition—Condonation—Fresh Adultery—Delay.*—The respondent left the petitioner and went to live with another woman. The petitioner instituted a suit for judicial separation, but abandoned it at the request of the respondent's brother, who made her an allowance. The respondent returned to the petitioner, who forgave him, and lived with him for a short time, when he again left her and never contributed anything to the support of her or their children. She knew that he had returned to the woman with whom he had previously been living, but was unable to take proceedings owing to want of means, till ten years after the desertion, when money was lent her for the purpose. *Held*, that the delay was sufficiently accounted for, and that the petitioner was entitled to a divorce for adultery and desertion.—*Binney v. Binney*, 69 L.T. 498.
- (ii.) **P. D.**—*Separation—Custody of Children—Magistrates—Remittal to—*The magistrates, who had rightly granted a separation order to the wife, refused to determine in a judicial manner the question of the children's custody. The Court on appeal from them declined to deal with the matter by hearing fresh evidence, and remitted the case to the magistrates upon the points as to the wife's fitness or unfitness to have the custody of the children, and as to the amount of her allowance.—*Foulkes v. Foulkes*, 69 L.T. 461.

### Injunction :—

- (iii.) **Ch. D.**—*Jurisdiction—Quo Warranto.*—The Court has jurisdiction to restrain a school board from declaring a member in default and proceeding to the election of a new member. The presence of a member of the board at a meeting, though he takes no part in the proceedings, and sits with the public, prevents the rule as to absence for six months taking effect. A school board, in declaring a member disqualified owing to absence, without giving him an opportunity of explaining his absence, is acting illegally.—*Richardson v. Methley School Board*, L.R. [1893] 3 Ch. 510; 62 L.J. Ch. 948; 69 L.T. 308; 42 W.R. 27.

### Insurance :—

- (iv.) **C. A.**—*Securities—Suretyship or Insurance—Scheme of Arrangement—Statutory Discharge—Discharge of Surety.*—The defendants, by an instrument which purported to be a "policy of insurance," guaranteed



to the plaintiff payment of \$ sum of money deposited by her in an Australian bank, if the bank should make default in payment. The bank did make default. A scheme of arrangement between the bank and its creditors was agreed to at a meeting of creditors. The plaintiff did not assent to the scheme, which, however, was binding on her by colonial statute. *Held*, that notwithstanding the scheme of arrangement, the defendants were liable to the plaintiff under their contract with her. — *Dane v. Mortgage Insurance Corporation*, L.R. [1894] 1 Q.B. 54.

### Interest :—

- (i.) **H. L.**—*Traffic Agreement between Railways—Monthly Balances—Verification of Accounts—3 & 4 Will IV., c. 42, s. 28.*—Decision of C. A. (see Vol. 17, p. 47, v.) affirmed.—*L.C. & D.R. v. S.E.R.*, L.R. [1893] A.C. 429; 69 L.T. 637.

### Interpleader :—

- (ii.) **Q. B. D.**—*Deposit by Claimant—Forfeiture of—Second Seizure—Second Deposit—County Courts Act, 1888, s. 156.*—An execution creditor seized goods in the house of the judgment debtor. The claimant claimed the goods, and paid into Court as a deposit the appraised value thereof to avert the sale. An interpleader issue was tried, the goods were adjudicated to be the property of the debtor, and the deposit was paid to the execution creditor. The debt remained unsatisfied. The execution creditor put in another execution upon the same goods, which remained on the same premises. The claimant again claimed the goods and paid a second deposit. *Held*, that though no title to the goods passed to the claimant on the payment of the first deposit, yet that the creditor was estopped from claiming the second deposit, as he had already received the full value of the goods in taking the first deposit. — *Haddow v. Morton*, L.R. [1894] 1 Q.B. 95; 63 L.J. Q.B. 38.

### Jurisdiction :—

- (iii.) **H. L.**—*Trespass—Land in Foreign Country—Defendant Resident in England—R.S.C., 1883, O. xxxvi., r. 1.*—The Supreme Court has no jurisdiction to entertain an action for damages for trespass on land situated abroad, the rules as to local venue confer no new jurisdiction. Decision of C. A. (see Vol. 18, p. 13, ii.) reversed.—*British South Africa Co. v. Companhia de Moçambique*, L.R. [1893] A.C. 602; 69 L.T. 609.

### Justices :—

- (iv.) **Q. B. D.**—*Disqualification by Interest—Rating Appeals—Special Sessions—16 Geo. II., c. 18, ss 1, 3—27 and 28 Vict., c. 89, s. 6.*—Justices of a corporate city, sitting at special sessions, have jurisdiction to hear an appeal against a poor-rate, although they are rated for the relief of the poor in the parish for which the rate appealed against is laid.—*Reg. v. Bohnbroke*, L.R. [1893] 2 Q.B. 347; 62 L.J. M.C. 180; 69 L.T. 717; 42 W.R. 128.
- (v.) **C. A.**—*Disqualification—Bias—Poor Rates—Appeal Against—Ratepayers.*—A justice is not disqualified from acting at special sessions in the determination of a rating appeal by reason of the fact that he is a ratepayer in the parish in which the rate appealed against was made.—*E. p. Overseers of Workington*, 42 W.R. 177.

**Landlord and Tenant:—**

- (i.) **H. L.—Agreement for Letting—Special Purpose—Application to other Purpose—Injunction.**—The owner of land in Ireland agreed with a Roman Catholic bishop to let some land to him and his successors, in order to provide a suitable residence and holding for a Roman Catholic officiating clergyman upon the estate, to be held so long as there should be and remain stationed upon the premises such an officiating clergymen, appointed by the bishop and his successors. Huts of wood, not attached to but resting on the land, were erected as a shelter for evicted tenants. *Held*, that this user was an application of the premises to a purpose other than that specified, and therefore a breach of the agreement, and that the landlord was entitled to have it restrained by injunction.—*Kehoe v. Marquess of Lansdowne*, L.R. [1893] A.C. 451; 62 L.J. P.C. 97.
- (ii.) **Q. B. D.—Bankruptcy—Rent due at Bankruptcy—Valuation—Set-off—Apportionment—Apportionment Act, 1870**—The debtor was tenant of a farm at a rent payable half-yearly on April 11th and October 11th, and at the date of his bankruptcy was under notice to quit on the next 11th October. The trustee did not disclaim the tenancy. On the expiration of the notice to quit a valuation was made between landlord and tenant, the amount of which did not equal the arrears of rent due. *Held*, that the landlord, upon proof of the custom prevailing in the county of Norfolk, where the farm was situated, was entitled to set-off the amount of valuation due by him to the outgoing tenant, against the whole arrears of rent. *Held*, also, that the Apportionment Act apportioned liabilities as well as rights.—*E. p. Lord Hastings; in re Wilson*, 62 L.J. Q.B. 628.
- (iii.) **C. A.—Distress—Getting over Wall.**—A landlord's bailiff, being employed to distrain for rent in a house, climbed over the garden wall from the backyard of the adjoining premises, and entered the house through an open window. *Held*, that it was not illegal to climb over the wall, and that the distress was lawful.—*Long v. Clarke*, L.R. [1894] 1 Q.B. 119; 69 L.T. 654; 42 W.R. 130.

**Lands Clauses Act:—**

- (iv.) **Ch. D.—Money in Court—Re-investment in Land—Costs—Apportionment—Scale Fee.**—The costs of a conveyance of land purchased as a re-investment of several funds in Court representing the purchase-moneys of lands belonging to a charity and taken at different times by various bodies under the Act, were charged according to the scale in the General Order. There was great inequality in the amounts of the funds dealt with. *Held*, that the scale charges being readily apportioned, ought, like the *ad valorem* stamp, to be borne rateably according to the several amounts contributed to the purchase-money by the several bodies who took the lands.—*In re Bishopsgate Foundation*, 42 W.R. 199.

**Licensing:—**

- (v.) **Q. B. D.—Beerhouse Licensed before 1869—Application for Transfer—Discretion of Justices—Licensing Act, 1828, s. 14—Wine and Beerhouse Act, 1869, ss. 8, 19.**—A beerhouse which had been licensed for the sale of beer to be consumed on the premises prior to May 1st, 1869, was to be pulled down for a public purpose. The holder of the licence applied for a grant of a corresponding licence for another house. *Held*, that the justices had a general discretion to refuse the application, and were not confined to the four grounds of refusal mentioned in the Act of 1869.—*Traynor v. Jones*, L.R. [1894] 1 Q.B. 83; 42 W.R. 201.

- (i.) **Q. B. D.**—*Death of Licence-holder—Minority of Heir—Licensing Act, 1872, s. 8.*—It is not necessary that the heir of a licensed person who dies before the expiration of his licence should have attained the age of twenty-one years before he can sell intoxicating liquors and carry on the business of the licensed house until the next special sessions without incurring the penalties provided by the Act.—*Rose v. Frogley*, 62 L.J. M.C. 181; 69 L.T. 346.

### Limitations:—

- (ii.) **Ch. D.**—*Gavelkind Lands—Possession of Father as Bailiff for Son.*—Where a father has entered into possession of gavelkind lands as natural guardian, and on behalf of his infant son, the mere fact of the coming of age of the son will not change the nature of the father's possession; and if nothing else has been done to alter the character of the possession, the Statute of Limitations will not begin to run in favour of a person claiming against the son, until the death of the father.—*Tinker v. Rodwell*, 69 L.T. 591.
- (iii.) **C. A.**—*Trustee—Solicitor to Trust.*—A trust fund was entrusted by the trustees to their solicitor to invest, and was by him invested together with other moneys belonging to different trusts on a mortgage in his own name. The mortgage was paid off in 1879, and the solicitor received the money so invested, and distributed one moiety of the trust fund, which had become absolutely vested. He retained the other moiety and did not account for the same. In 1891 an action was brought against his estate for an account. *Held*, that the action was not barred by the statute as the solicitor must be considered an express trustee; either as having been trustee for his clients, the real trustees, or as having assumed to act as trustee, being a stranger to the trust.—*Soar v. Ashwell*, L.R. [1893] 2 Q.B. 390; 69 L.T. 585; 42 W.R. 165.

### Local Government:—

- (iv.) **C. A.**—*County Council—Jurisdiction—Power to Amend Local and Personal Acts—Local Government Act, 1888, ss. 57, 59 (6).*—By the statute of 9 Anne, c. 22, a tax was laid upon coals coming to London, and commissioners were appointed for the purpose of building new churches. By 10 Anne, c. 11, the commissioners were empowered to buy land for cemeteries to be used with the new churches; and sect. 4 provided that whenever they should buy land for such a cemetery outside a new parish it should become part of that parish. In accordance with these provisions land in the parish of P. was bought and assigned to be the cemetery of the new parish of G., and was used as such until it was closed. The county council proposed to make an order transferring such land from the parish of G. to the parish of P. *Held*, that, whether the statutes of Anne were general or local and personal, sect. 4 of the latter statute was a local and personal enactment, and that the county council had power to make an order which would amend it.—*Reg. v. London County Council*, L.R. [1893] 2 Q.B. 454; 63 L.J. Q.B. 4; 69 L.T. 580; 42 W.R. 1.
- (v.) **Q. B. D.**—*Drainage—Default of Local Authority—Enquiry—Procedure—Order—Mandamus—Public Health Act, 1875, s. 299.*—The Local Government Board had issued orders calling upon two local sanitary authorities to perform their duty within six months in the matter of a complaint in each order mentioned by executing works for the proper drainage of their districts. Enquiries had been held by inspectors of the board, who found that default had been made, but declined to admit evidence as to the great difficulties and expense of drainage schemes, or as to the probable cost of such schemes. The Local

Government Board neither proposed nor suggested any definite schemes. *Held*, that a *mandamus* must go calling upon the authorities to perform their duty in the terms of the orders. As there was no legal error, and no omission of legal form, the Court could not enquire whether there had been a due enquiry or whether the findings of the Local Government Board were sufficient or not.—*Reg. v. Staines Union*, 62 L.J. Q.B. 541; 69 L.T. 714.

- (i.) **C. A.**—*Paving Street—Apportionment of Expenses—Dispute—Action—Jurisdiction—Public Health Act, 1875, ss. 150, 257, 268.*—Decision of Ch. D. (see Vol. 18, p. 122, ii.) reversed.—*Mayor, &c., of Folkestone v. Brooks*, L.R. [1893] 3 Ch. 22; 62 L.J.Ch. 863; 69 L.T. 123.
- (ii.) **Ch. D.**—*Removal of Sign—Power of Commissioners—Right of Owner of Sign to Object.*—The commissioners of the town of Crediton, in pursuance of their local Act, gave the defendant fourteen days' notice requiring him to remove a sign which projected into the street, and which they considered dangerous to the public passage along the street. The defendant refused to remove the sign. *Held*, that if he wished to object to the requisition he ought to have asked for an opportunity of being heard in opposition; and that as he had not taken that course he had lost his right (if any) to object, and must be restrained from interfering with the removal of the sign by the commissioners.—*Attorney-General v. Hooper*, L.R. [1893] 3 Ch. 483; 63 L.J. Ch. 18; 69 L.T. 340.
- (iii.) **C. A.**—*Water Supply—Mains Under Streets—Private Road—Consent of Owner—Notice—Waterworks Clauses Act, 1847, ss. 28, 29, 30—Public Health Act, 1875, ss. 16, 54, 57*—Decision of Ch. D. (see Vol. 18, p. 15, iv.) reversed.—*Hill v. Wallasey Local Board*, 63 L.J. Ch. 1; 69 L.T. 641; 42 W.R. 81.

### Lunatic :—

- (iv.) **C. A.**—*Judgment Creditor—Charging Order on Fund in Court—Protection of Fund—Maintenance of Lunatic.*—There was a fund in Court the property of a lunatic. A charging order was made charging the fund with the amount of judgments obtained against the lunatic. *Held*, that such order did not prevent the Court from sanctioning a scheme for the maintenance of the lunatic out of income and capital, or entitle the judgment creditors to have any portion of the capital impounded for their benefit.—*In re Plenderleith*, L.R. [1893] 3 Ch. 332; 62 L.J. Ch. 993; 69 L.T. 325.

### Married Woman :—

- (v.) **Q. B. D.**—*Equitable Execution—Receiver—Settlement—Life Interests of Husband and Wife in Furniture.*—Furniture and effects were vested in the trustees of a marriage settlement on trust to allow the wife to use the same for her sole and separate use for life, and after her death to allow the husband to use the same for life. There was a power of sale over the furniture, the income arising from the proceeds to be paid to such persons as the husband and wife should jointly appoint, and in default to the wife for life for her sole and separate use without power of anticipation, with trusts over in favour of the children. A judgment creditor of the husband and wife applied for a receiver of the interests of the husband and wife under the settlement. *Held*, that having regard to the terms of the settlement there was no power to appoint such a receiver.—*Whitaker v. Cohen*, 69 L.T. 451.

**Master and Servant:—**

- (i.) **C. A.**—*Hackney Carriage—Negligence of Driver—Liability of Proprietor—Hackney and Stage Carriages (Metropolis) Acts, 1831 and 1848.*—The registered proprietor of a hackney carriage in London is in all cases liable for the acts of the driver to the same extent as if the driver were his servant.—*Keen v. Henry*, 89 L.T. 671.

**Mayor's Court:—**

- (ii.) **Q. B. D.**—*Irregularity in Procedure—Taxation—Prohibition*—The Judge of the Mayor's Court awarded costs on the higher scale, but omitted to state in his certificate any ground for so doing. *Held*, that prohibition would not lie. This omission, though an irregularity in procedure, was not an act done without jurisdiction; and an act done by a judge within his jurisdiction does not become a matter for prohibition, merely because there happens to be no remedy by way of appeal.—*Reg. v. Lord Mayor of London and Stock*, 62 L.J. Q.B. 589; 69 L.T. 721.

**Metropolis Management Act:—**

- (iii.) **Q. B. D.**—*Repairs of Road—Necessity of Works—Question as to—Metropolis Management Act, 1890, s. 3.*—It is for vestries and district boards to decide as to the necessity of works for the repair of carriage roads, and they are not bound to prove such necessity to the satisfaction of the tribunal before which they seek to recover the apportioned expenses of such works.—*Stroud v. Wandsworth Board of Works*, L.R. [1894] 1 Q.B. 64; 63 L.J. M.C. 6.
- (iv.) **C. A.**—*Valuations—Appeal—Time for Hearing—Valuation of Property (Metropolis) Act, 1869, s. 42, sub-s. 13.*—See Vol. 19, p. 16, iv. *Held*, by C. A., that the justices in Quarter Sessions had authority to hear the appeal, although the time prescribed by the Act had expired, but that a writ of prohibition ought to go because the appeal was not an appeal against totals, but against the value of hereditaments, which would not lie except from a decision of justices in special sessions. *Quere*, whether the London County Council had any right of appeal.—*Reg. v. Justices of the County of London*, L.R. [1893] 2 Q.B. 476; 69 L.T. 682.

**Mortgage:—**

- (v.) **Ch. D.**—*Priorities—Charge of Annuities—Receivership Deed—Notice.*—It is not necessary to use any general words of charge to constitute a charge in equity, but it is sufficient if an intention can be gathered that the property dealt with by an instrument should constitute a security. By a marriage settlement X. was entitled to an annuity charged on the life estate of A. in certain family property, and secured by a term vested in trustees. By a receivership deed of even date with and reciting the settlement, A. covenanted to pay the annuity, and appointed a receiver to receive the rents of the property in the name of A. during his life, and thereout, after paying outgoings, to pay the annuity. A. also covenanted not to revoke the appointment of the receiver during the life of X. The defendants became mortgagees of the life estate of A., having notice of the receivership deed. *Held*, that by the receivership deed the annuity of X. was charged upon the life estate of A., and had priority over the mortgage of the defendants.—*Craddock v. Scottish Provident Institution*, 63 L.J. Ch. 15; 69 L.T. 390.
- (vi.) **C. A.**—*Sale—Irregularity—Purchaser Without Notice—Conveyancing Acts, 1881, s. 21, sub-s. 2; 1882, s. 3, sub-s. 1.*—Decision of Ch. D. (see Vol. 19, p. 16, vi.) *affirmed*.—*Bailey v. Barnes*, L.R. [1894] 1 Ch. 25; 69 L.T. 542; 42 W.R. 66.

**Notice :—**

- (i.) **P. C.**—*Constructive—Transfer of Shares—Trust.*—Where shares had been transferred as security for a loan. *Held*, that derivative transferees from the lender were not affected by a trust in favour of the borrower, unless such trust was clearly disclosed on the face of the title, or was otherwise notified to the transferees. The words “manager in trust” appended to the signature of a bank manager, imports that he acted as trustee for his employers, and are not calculated to suggest that he stood in a fiduciary relation to some third person, so as to affect a transferee for value with constructive notice of such relationship.—*London and Canadian Loan and Agency Co. v. Duggan*, L.R. [1898] A.C. 506; 68 L.J. P.C. 14.

**Partition :—**

- (ii.) **Ch. D.**—*Set-Off—Interest.*—Parties who had bought under liberty to bid, in a partition action, and had been allowed to set-off part of the purchase-money against their shares, were charged interest at the rate of three per cent. on the amounts set-off.—*Field v. Dracup*, L.R. [1894] 1 Ch. 59.

**Partnership.**—*See Arbitration*, p. 32, iv.

**Poison :—**

- (iii.) **Q. B. D.**—*Sale of—Pharmacy Act, 1868, s. 15.*—In order to render a person liable for selling a poison without being a chemist, it is not sufficient to prove the sale of a compound containing an infinitesimally small quantity of a poison.—*Pharmaceutical Society v. Delle*, L.R. [1894] 1 Q.B. 71; 42 W.R. 192.

**Poor Law :—**

- (iv.) **H. L.**—*Rating—Sewage Works—Beneficial Occupation—Hypothetical Tenant.*—The London County Council were owners of lands, pumping stations, deodorizing works, and outfall sewers, forming part of the metropolitan sewage system, and necessary to enable them to perform statutory duties. As used the lands and works were incapable of yielding a profit, and the London County Council were practically the only possible tenants. If the lands and works had been owned by a private person the county council would have been willing to pay a rent sufficient to support the rateable value at which they had been assessed; but except for the purposes of the sewage system the rateable value would be lower. *Held*, that the true test of beneficial occupation was not whether a profit could be made, but whether the occupation was of value; that even if the county council could not under their Acts be legally tenants, they ought to be taken into account as hypothetical tenants, for the purpose of determining the rateable value of the lands and works; that the lands and works were rateable, and that the county council were assessed on the true principle. Decisions of C. A. (see Vol. 17, p. 187, iv., and Vol. 18, p. 90, iii.) reversed.—*London County Council v. Churchwardens of Erith*, L.R. [1893] A.C. 562.
- (v.) **C. A.**—*Rating—Easement.*—Decision of Q. B. D. (see Vol. 19, p. 18, ii.) reversed.—*Halkyn District Mines Drainage Co. v. Holywell Union Assessment Committee*, 69 L.T. 705.
- (vi.) **C. A.**—*Rating—Exclusive Occupation.*—Decision of Q. B. D. (see Vol. 19, p. 18, iii.) affirmed.—*Southport Corporation v. Ormskirk Assessment Committee*, 42 W.R. 158.

- (i.) **Q. B. D.**—*Rating—Exclusive Occupation—River Formed into Canal.*—A railway company had been empowered to dredge and cleanse a river, and to maintain it, and the locks, new cuts, canals and towing path, navigable for boats, and to take tolls on craft using it. *Held*, that the company was not liable to be rated in respect of the natural river course, but that they were liable in respect of the towing path as exclusive occupiers, irrespective of the question whether they were owners of the soil.—*M.S. & L.R. Co. v. Doncaster Assessment Committee*, 69 L.T. 350.
- (ii.) **Q. B. D.**—*Removal—Lunatic Pauper over Sixteen living with Father.*—*Lunacy Act*, 1890, ss. 288, 289, 290, 294.—A pauper lunatic over sixteen years of age lived with her father for two years and a-half within the appellant union. In October, 1891, her father removed with his family to a parish within the respondent union, with no intention of returning. The lunatic was afterwards taken to an asylum. In August, 1892, two justices made an order adjudging her settlement to be in the appellant union, and ordering such union to pay for her maintenance. *Held*, that the order was appealable; and that when the lunatic left the appellant union with her father as part of his family, she put an end to her status of irremovability there, and that the order must be quashed.—*Hendon Union v. Hampstead Guardians*, 62 L.J. M.C. 170.
- (iii.) **Q. B. D.**—*Settlement—Pauper Lunatic—Soldier.*—*Lunacy Act*, 1890, ss. 286, 290—*Army Act*, 1881, ss. 91, 163.—The attestation paper of a pauper lunatic soldier at the time of his enlistment stated that he was born in the parish of C. The Secretary of State for War made an order that he should be admitted into the county asylum. No information could be obtained from the lunatic as to his birthplace, and it could not be ascertained by inquiry that he had ever had a settlement in the parish of C. The justices, acting on the evidence of the attestation paper, refused to make an order on the county. *Held*, that the case must be remitted to the justices to make the order upon the county, the attestation paper not being sufficient evidence of a settlement.—*Guardians of Chertsey Union v. Clerk of the Peace of Surrey*, 69 L.T. 384.

#### Power:—

- (iv.) **Ch. D.**—*Appointment—Appointment to Trustee for Object—Transfer of Fund.*—By marriage settlement, a fund was vested in trustees upon trust, after the deaths of the husband and wife, for such of the children as they should appoint. The husband and wife executed a deed appointing that the trustees should, after their deaths, stand possessed of one-sixth part of the trust fund in trust for R., a daughter, for her separate use. And they declared that the appointment was made to her upon certain trusts for the benefit of E., another daughter. *Held*, that the settlement trustees ought to retain the appointed part, and not to hand it over to R.—*Knight-Bruce v. Butterworth*, L.R. [1894] 1 Ch. 56; 69 L.T. 689; 42 W.R. 172.

#### Practice:—

- (v.) **P. C.**—*Appeal—Security for Costs—Accidental Error—Order of 1853, Rule v.*—Where an appeal to Her Majesty had been admitted in the Supreme Court of New South Wales, and security for costs deposited to be dealt as the Privy Council should think fit, and the appeal stood dismissed without special order for want of prosecution, *held*, that the respondent should apply to the Supreme Court to correct its order by directing that costs should abide the result of the appeal; and in the event of such application being refused, should apply for special leave to appeal from such refusal.—*Milson v. Carter*, L.R. [1895] A.C. 688; 62 L.J. P.C. 126.

- (i.) **Q. B. D.**—*Deceased Plaintiff—Receiver—Application by Executors*—*R.S.C.*, 1883, *O. xvii.*, *r. 4*; *O. lxii.*, *rr. 8, 28*.—The executors of a deceased plaintiff, whose judgment is still unsatisfied, cannot apply for a receiver of the defendant's interest under a will, and for an injunction to restrain him from dealing therewith, without having applied for an order that the proceedings might be continued in their names.—*Norburn v. Norburn*, 42 W.R. 127.
- (ii.) **C. A.**—*Discovery—Postponement of Inspection—Question of Law*—*R.S.C.*, 1883, *O. xxv.*, *r. 2*; *O. xxxi.*, *r. 20*.—The common order for discovery had been made against the defendants, who made an affidavit of documents which were very voluminous, and afterwards applied by summons that further discovery might be postponed till certain issues of law, which were not raised by the pleadings, but which they submitted to the Court, should be determined. *Held*, that the defence might be amended so as to raise the issues which it was sought to have determined; and that the Court then had jurisdiction to order further discovery to be postponed till such issues had been determined.—*Lever v. Land Securities Co.*, 42 W.R. 104.
- (iii.) **Ch. D.**—*Evidence—Commission to Take*.—In the exercise of its discretion as to granting a commission to take evidence abroad, the Court will not regard the case of a defendant with the same strictness as the case of a plaintiff who has chosen his own forum.—*Ross v. Woodford*, L.R. [1894] 1 Ch. 38.
- (iv.) **C. A.**—*Judgment—Action against Firm—Infant Partner*—*R.S.C.*, 1883, *O. xiv.*, *r. 1*; *O. xlviii a.*, *rr. 1, 8*.—A specially indorsed writ was issued against a firm consisting of two partners, one an infant. Both partners appeared, the infant by his guardian *ad litem*. *Held*, that judgment could be signed against the firm, although one partner was an infant—*Harris v. Beauchamp Brothers*, L.R. [1893] 2 Q.B. 534; 69 L.T. 373; 42 W.R. 37.
- (v.) **C. A.**—*Jury—Right to*—*R.S.C.*, 1883, *O. xxxvi.*, *rr. 4, 6, 7*.—An action was brought in the Queen's Bench Division in respect of a claim which, before the Judicature Act, might have sued on either in Chancery or at common law. *Held*, that the defendants could not claim a trial by jury as a matter of right.—*Baring Brothers & Co. v. North Western of Uruguay Railway Co.*, L.R. [1873] 2 Q.B. 406.
- (vi.) **C. A.**—*Parties—Joinder of Plaintiffs—Separate Causes of Action*—*R.S.C.*, 1883, *O. xv.*, *r. 1*; *O. xviii.*, *rr. 1, 8*.—The several shippers of different shipments of cotton, shipped on the same ship for carriage from and to the same place, joined as plaintiffs in one action on their several bills of lading for damages for short deliveries. *Held*, that they could so join, subject to the judge's power to order separate trials, or to make such other order as might be necessary, in case it should afterwards appear that any of the claims could not conveniently be disposed of with the others.—*Hannay and Co. v. Smurthwaite*, L.R. [1893] 2 Q.B. 412; 69 L.T. 677; 42 W.R. 133.
- (vii.) **Ch. D.**—*Pleadings—Embarrassing—Delay*.—An agreement prohibited the defendant, on leaving the plaintiff's employment, from exercising a certain trade within a certain area, under a penalty of £500, as liquidated damages. The defendant left the plaintiff's service, and broke the agreement. The plaintiff claimed an injunction and damages, and obtained an interim injunction. The action was set down for argument whether the defendant was not released from liability on payment of £500. The plaintiff asked for an injunction, withdrawing his claim for damages. *Held*, that the defendant ought to have called on the plaintiff to elect between his claims, as he could not succeed in both,



and the pleadings were embarrassing; but that he was now too late in taking the point, and that an injunction must be granted.—*Gent v. Harrison*, 69 L.T. 307.

- (i.) **P. D.—Probate Suit—Compromise—Terms filed—Motion to make Terms a Rule of Court.**—Terms of compromise of a probate suit were signed, which provided that all proceedings should be stayed, and that the terms should be filed in the registry. It was not provided that they should be made a rule of Court. In consequence of a dispute, one of the parties moved to have the terms made a rule of Court. *Held*, that there was no jurisdiction to do so, as the terms did not expressly provide that they should be made a rule of Court, and the suit was at an end.—*Graves v. Graves*, 69 L.T. 420.
- (ii.) **C. A.—Security for Costs—Liquidator of Company—Judgment for Plaintiffs—Reversal.**—The liquidators of a company, on an application by the defendants for security for costs, gave an undertaking "to set apart out of the assets of the company a sum sufficient to meet the costs (if any) which the plaintiff company may be liable to pay to the defendants." The plaintiff company was successful at the trial, and the liquidators distributed the assets, though they knew that an appeal would be brought. The judgment was reversed on appeal. *Held*, that the liquidators were still liable on their undertaking, but only to the extent of £200, which was the amount of security for which the defendants had asked in their summons for security for costs.—*Hawkins Hill Consolidated Gold Mining Co. v. Want, Johnson and Co.*, 62 L.J. Q.B. 505; 69 L.T. 297.
- (iii.) **Ch. D.—Service out of Jurisdiction—Notice of Motion—R.S.C., 1883, O. xl., r. 1; O. lii., r. 9.**—Unconditional appearance to a writ served out of the jurisdiction is submission to the jurisdiction as to the whole claim, though part of it is outside Order xl., rule 1. On motion to discharge an order giving leave to serve a writ out of the jurisdiction (part of the claim being outside Order xl., rule 1) the order was allowed to stand; but it was ordered that the plaintiff should not be entitled to relief on the part of the claim outside such rule. *Semble*, the Court cannot allow notice of motion for an injunction to be served out of the jurisdiction along with the writ.—*Manitoba and North Western Land Corporation v. Allan*, L.R. [1893] 3 Ch. 482; 69 L.T. 558.
- (iv.) **C. A.—Service out of Jurisdiction—Writ—R.S.C., 1883, O. xi., r. 1 (g).**—When leave is given to serve notice of a writ out of the jurisdiction upon a foreign subject resident or carrying on business in a foreign country, who is a necessary or proper party to an action properly brought against a person duly served within the jurisdiction, an order ought not to be made, except under special circumstances, that the plaintiff shall not sign judgment or issue execution against the foreign defendant without leave.—*Firth and Sons v. De Las Rivas* (No. 2), 62 L.T. 666; 42 W.R. 100.
- (v.) **Q. B. D.—Set-off—Receiver—Personal Liability.**—The defendant was executor of G., and receiver and manager of his estate. G. had guaranteed a loan made by the plaintiff to X., in respect of which the defendant had paid the plaintiff £550, and obtained judgment against X. for that sum. In the course of managing G.'s farm the defendant bought goods from X. for which he owed X. £45, which debt X. assigned to the plaintiff. The defendant sought to set off the judgment against such debt. *Held*, that as between the defendant and X. the debt of £45 was a personal one, and that the defendant could not set it off against the debt to the estate of G.—*Nelson v. Roberts*, 69 L.T. 352.

- (i.) **Ch. D.**—*Settled Land—Sale of—Summons for Rescission—Service—Settled Land Acts, 1882, s. 31, sub-s. 3, s. 46, sub-s. 5, s. 50, sub-ss. 1, 3; 1890, s. 4.*—A tenant for life contracted to sell the settled estates free from incumbrances. His wife, who claimed to be assignee for value of his life interest, was not a party to the sale, and refused to consent. The purchaser took out a summons for a declaration whether her consent was necessary, and had been obtained, and that if it was necessary and had not been obtained, he was entitled at his option to rescind the contract or to have specific performance with compensation. The summons was served on the vendor, and also on his wife. She objected to the jurisdiction. *Held*, that had been improperly served on her, and must be dismissed. — *In re Ailesbury Settled Estates*, 62 L.J. Ch. 1012; 69 L.T. 493; 42 W.R. 45.
- (ii.) **P. D.**—*Subpoena—Difficulty in Serving—Alleged Obstruction.*—Although it is the moral duty of a private inquiry agent to afford all reasonable facilities for the service of subpoenas upon his assistants, in a case in which they have been employed, he is not liable to attachment, unless he actually obstructs such service. In the absence of evidence of actual obstruction the Court refused to issue an attachment against the inquiry agent, but being of opinion that the conduct of the inquiry agent, or of a person acting on his behalf and with his authority, had given the petitioner reasonable ground to apply for an attachment, dismissed the application without costs. — *Wylam v. Wylam*, 69 L.T. 500.
- (iii.) **C. A.**—*Taxation—Agency Charges—Firms of Solicitors having Common Partners—R.S.C. 1883, Appendix N., Costs, r. 119.*—Agency charges for work done by a London firm of solicitors as agents for a country firm—two partners out of those in each firm being the same—were disallowed on taxation. *Held*, that the disallowance was proper, being in accordance with the practice of the chancery taxing masters for forty or fifty years, which practice the Court would not overrule. — *In re Borough Commercial and Building Society*, 42 W.R. 161.

### Principal and Agent:—

- (iv.) **C. A.**—*Excess of Authority—Receipt by Cheque—Cheque Dishonoured.*—C. was the plaintiff's tenant and was restricted from assigning his lease without licence. He applied for licence to assign, which the plaintiff consented to grant, and put the matter into the hands of the defendant as his agent, with instructions to keep the licence in his hands until certain arrears of rent had been paid by C. The defendant handed over the licence to C. on receipt of a cheque for the arrears and his own commission. The cheque was dishonoured. *Held*, that as there was no evidence of usage to justify the defendant in accepting payment by cheque, he had exceeded his authority in doing so, and that the plaintiff was entitled to recover damages for his negligence, such damages being the amount of rent in arrear. — *Papé v. Westcott*, 42 W.R. 181.
- (v.) **Q. B. D.**—*Sale by Agent—Limited Authority—Title of Purchaser—Estoppel—Factors Acts.*—Plaintiff entrusted a valuable chattel to X., a dealer in gems, &c., who, as a known part of his business, sold gems, &c., for other people, in his own name, and having them in his possession. The chattel was entrusted on terms that it should not be sold without the plaintiff's further authority, and that the cheque received in payment should be handed to the plaintiff intact. X. sold the chattel to the defendant for £200, which was satisfied by a payment of £30 to X., and the obtaining of the discharge of a judgment against him. Plaintiff sued to recover possession of the chattel. *Held*, that X. was acting outside his authority in selling the chattel without the plaintiff's

further authority, and therefore the defendant obtained no title against the plaintiff, who was not estopped from disputing his title. *Held*, that as the chattel was never entrusted for sale, and as, having regard to the mode of payment, the sale was not in the ordinary course of business, the defendant was not protected by the Factors Act in force at the date of the transaction (6 Geo. IV., c. 94, s. 4).—*Biggs v. Evans*, L.R. [1894] 1 Q.B. 88; 69 L.T. 723.

- (i.) **C. A.**—*Undisclosed Principal—Set-Off of Agent's Debt.*—The plaintiffs employed B. to collect moneys due to them under policies of marine insurance. B. employed the defendants to collect such moneys. The defendants did not know that B. was not acting as a principal. After the defendants had collected some moneys the plaintiffs gave notice that it was to be paid to them. B. had become bankrupt, and the defendants claimed to set-off against the moneys so collected a debt due to them from B. *Held*, that they were entitled to make the set-off.—*Montagu & Co. v. Forwood Brothers & Co.*, L.R. [1893] 2 Q.B. 350; 69 L.T. 371; 42 W.R. 124.

### Principal and Surety:—

- (ii.) **C. A.**—*Contribution.*—F., with E. and B. as sureties, gave a bond to secure the payment of a sum of money at the end of five years with interest in the meantime. The bond provided that if E. or B. should die, and if F. did not within one month procure a solvent person to enter into a further bond to the same effect as the former one, the principal sum should at once become payable. E. died, and a fresh bond was given by F., B., and H. to the same effect as the former bond, with a proviso that the liability of E.'s estate should not be altered, varied, or lessened. B. and H. paid the debt. *Held*, that E.'s estate was liable to contribute to the extent of one-third of what they had paid.—*Coles v. Peyton*, L.R. [1893] 3 Ch. 238; 62 L.J. Ch. 991.

### Railway:—

- (iii.) **Q. B. D.**—*Level Crossing—Handrails, &c.—Power of Justices—Railways Clauses Act, 1845, ss. 46, 47, 61, 62.*—The justices have no power to order the erection of handrails and fences on a level crossing, where the road is a carriage road and general highway, but only where it is a bridleway, footway, or highway other than a public carriageway.—*Rey. v. Schofield*, 69 L.T. 311.
- (iv.) **Q. B. D.**—*Passenger—Forcible Removal of—Assault—Implied Authority.*—There is an implied authority by a railway company to its servants to remove passengers from carriages in which they are misconducting themselves, or travelling without payment of fare. But a railway company is liable for the acts of its servants if, in pursuance of such authority, but acting under a misapprehension, they eject a passenger who has neither misconducted himself, nor omitted to pay his fare.—*Low v. G.N.R.*, 62 L.J. Q.B. 524.
- (v.) **C. A.**—*Special Act—Rate for Forwarding Traffic of another Company—No Duty towards Public.*—Where by a section in a special Act of the A. company, certain provisions were made as to the charges which might be made by the B. company for traffic coming over their line from or destined for the line of the A. company, and such provisions appeared by the context to be intended solely to protect the interests of the A. company against the B. company, *held*, that no duty was thereby created other than to the A. company, and that a person whose goods had been carried by the B. company over their line to the line of the A. company, could not set up, by way of defence to an action for charges made by the B. company for such carriage which

were within the maximum authorised rates, that such charges were in excess of the rates provided by the section above-mentioned.—*Taff Vale Railway Co. v. Davis*, L.R. [1894] 1 Q.B. 43.

- (i) **C. A. & Q. B. D.**—*Working of Minerals—Line Unsafe—Mandamus to Company to Maintain Line*.—The applicants, who owned the minerals under a railway, worked the clay under the line, which in consequence became unsafe. The company were not allowed by the applicants to prop the line up, and therefore abandoned it. The applicants obtained a rule for a mandamus to compel the company to re-instate and keep open the line. *Held*, that mandamus was the proper remedy if justified by the circumstances, but that the words of the company's Act being enabling and not compulsory, there was no absolute duty on the company to maintain the line, and that they could abandon it, and that a mandamus ought not to issue in favour of the persons who had themselves pulled the line down.—*Reg. v. G.W.R.; e.p. Ruabon Brick Co.*, 62 L.J. Q.B. 572; 69 L.T. 443 & 572.

### Replevin:—

- (ii.) **Q. B. D.**—*Measure of Damage—Consequential Damage—County Court—Appeal—Value of Goods—County Courts Act, 1888, s. 120*.—Goods of the plaintiff were seized under a distress for alleged arrears of rent, and the plaintiff claimed damages under various heads in the county court. One of such heads of damage was "illegal distress," and another was "annoyance and injury to credit and reputation in trade." *Held*, that such damages were recoverable in an action of replevin. On an objection to an appeal on the ground that the goods were not of the value of £20, *held*, that where there is no finding of the value of the goods the Court must determine their value on such evidence as may be before it.—*Smith v. Enright*, 69 L.T. 724.

### Revenue:—

- (iii.) **Q. B. D.**—*Income Tax—British Company—Trade Abroad—Profits not Remitted—5 & 6 Vict., c. 35, s. 100, Sched. D., Cases 4 & 5—16 & 17 Vict., c. 34, s. 2, Sched. D.*—In the case of two British companies, one of which worked a brewery in America, and the other of which invested its capital in shares of other companies, and held shares in four German companies, *held*, in the case of the first, that profits arising in America, and retained in America to be paid as dividends to American shareholders, and in the case of the second, that dividends received on the shares in the four German companies, and retained in foreign banks to be applied in paying dividends to foreign shareholders, were not chargeable with income tax.—*Bartholomay Brewing Co. v. Wyatt; Nobel Dynamite Trust Co. v. Wyatt*, L.R. [1893] 2 Q.B. 499; 62 L.J. Q.B. 525; 69 L.T. 561; 42 W.R. 173.
- (iv.) **H. L.**—*Land Tax—Railway Tunnel*.—Decision of C. A. (see Vol. 17, p. 103, v.) affirmed.—*Metropolitan Railway v. Fowler*, L.R. [1893] A.C. 416; 62 L.J. Q.B. 553; 69 L.T. 890.
- (v.) **Q. B. D.**—*Share Capital—Increase of—Duty on—Conversion of Debenture Stock—Customs and Inland Revenue Act, 1889, s. 17*.—Under the powers of a special act certain debenture stock of an incorporated company where the liability was limited by Act of Parliament was cancelled, and an amount of First Preference Stock was created in lieu thereof. *Held*, that this was an increase of the "nominal share capital" of the company, and that the company was bound to deliver a statement of the same to the Commissioners of Inland Revenue.—*A.-G. v. Milford Docks Co.*, 69 L.T. 453.

- (i.) **Q. B. D.**—*Stamp—Conveyance—Stamp Act, 1870, s. 70 & Schedule.*—An instrument by which the partners of a trading firm carry out an arrangement *inter se* to transfer their business and property to a limited company, consisting of themselves alone, is not liable to *ad valorem* duty as a “conveyance on sale,” but only to a duty of 10s.—*Foster & Co. v. Commissioners of Inland Revenue*, 62 L.J. Q.B. 518; 69 L.T. 529.

### Right of Way:—

- (ii.) **Q. B. D.**—*Open Space—Public User—Dedication.*—Mere user by the public of an open space is not sufficient evidence of an intention on the part of the owner to dedicate the whole surface of the open space to the public.—*Robinson v. Cowpen Local Board*, 62 L.J. Q.B. 619.

### Riparian Owner:—

- (iii.) **H. L.**—*Scotch Law—Mine—Right to Pump Water from Mine into River.*—A mine-owner who commences, without prescriptive right, to pump water into a stream from his mine, and thereby prejudicially affects the water of the stream, may be interdicted at the suit of a riparian owner for whose use the stream is rendered less suitable.—*Young v. Bankier Distillery Co.*, L.R. [1893] A.C. 691.

### River Clyde:—

- (iv.) **H. L.**—*Clyde Navigation Acts—Construction of.*—The Erskine ferry is not part of the undertaking of the trustees of the Clyde Navigation, and they are not bound to repair damages done to the piers of the ferry.—*Trustees of the Clyde Navigation v. Lord Blantyre*, L.R. [1893] A.C. 703.

### Scotch Law:—

- (v.) **H. L.**—*Heritage—Real or Personal Burden—Titles to Land Consolidation (Scotland) Act, 1868, s. 19, sub-s. 4.*—A testator, by *mortis causa* settlement, conveyed to his son in general terms his whole estate, heritable or moveable, declaring in the dispositive clause that the disposition was granted, and was to be accepted under the following burdens which “are hereby declared to be real burdens on the estates and effects hereby conveyed.” One of these was an annuity to the testator’s daughter. After the testator’s death, the son completed titles to the various heritable subjects in which the testator had been infeft by expeding and recording notarial instruments in terms of the section above-mentioned. In all these instruments, the annuity was inserted at full length, and declared to be a real burden on the land. The son’s estate was sequestrated, and the trustee in bankruptcy claimed that the annuity had not been validly constituted a real burden upon the lands. *Held*, that it had been so constituted.—*Cowie v. Muirden*, L.R. [1893] A.C. 674.
- (vi.) **H. L.**—*Marriage Contract—Provision for Issue of Children—Whether Contractual or Testamentary.*—A conveyance in an ante-nuptial contract of marriage in favour of the children of the marriage and the issue of such children is not revocable by the spouses as regards the issue of the children.—*Macdonald v. Scott*, L.R. [1893] A.C. 642.
- (vii.) **H. L.**—*Voluntary Church—Contract—Trust.*—The rules of a cathedral of the Scottish Episcopal Church provided, *inter alia*, that there should be three or more canons residentiary, and that the temporal affairs of the cathedral should be vested in a board of management, with which should rest the administration of the funds, and the providing fitting

support "for the provost and canons." One of the canons sued the board with reference to the apportionment of their funds. *Held*, that the action was irrelevant, that there was no contract or trust of which he was a beneficiary, and that the distribution of the funds by the board could not be questioned so long as they were administered in good faith and applied only to cathedral purposes.—*Brook v. Kelly*, L.R. [1898] A.C. 721.

**Settled Land :—**

- (i.) **C. A.—Improvements—Application of Capital Moneys—Settled Land Acts**, 1882, ss. 21, 25, 26, 53; 1890, s. 13, sub-ss. 2, 4.—The Settled Land Acts do not authorise the application of capital moneys to matters of mere amenity or luxury, such as the indulgence of architectural tastes. The building of a house for an estate agent is also not an improvement to which capital moneys can be applied.—*In re Lord Gerard's Settled Estates*, L.R. [1898] 3 Ch. 252; 63 L.J. Ch. 23; 69 L.T. 393.
- (ii.) **Ch. D.—Improvements—Rentcharges—Repayment—Settled Land Act**, 1890, s. 15.—The Court cannot order trustees to employ capital moneys in repaying to the tenant for life rentcharges created to pay for improvements, which rentcharges have been paid before the matter came before the Court. Expenditure under the Act must be an expenditure of moneys in hand, and there cannot be a charge *in futuro*. The Court would be abdication its discretion if it made an order dealing with capital moneys hereafter to arise. A letter from the tenant for life to one of the trustees stating that he has expended large sums out of his private moneys in improvements, and asking for the advice and opinion of the trustee, but not suggesting an application to the Court, cannot be treated as a request to apply to the Court.—*In re Lord Bristol's Settled Estates*, L.R. [1898] 3 Ch. 161; 62 L.J. Ch. 901; 69 L.T. 304; 42 W.R. 46.
- (iii.) **Ch. D.—Settlement—Trust for Sale—Powers of Management—Equitable Tenant for Life—Leave to Exercise Powers of Tenant for Life—Costs—Parties—Incumbrances—Settled Land Acts**, 1882, s. 63; 1884, s. 7 (ii).—Settlement of land (subject to a legal rentcharge) upon trust for sale, with power of postponement, the income to be upon trust for a married woman for life for her separate use. The trustees had vested in them large powers of management, and had no present intention of selling. The costs of management being heavy, the equitable tenant for life applied for possession or receipt of the rents and profits, and for leave to exercise her powers under the Settled Land Acts other than the powers of sale and exchange. *Held* (1), that under the circumstances the Court would, on the grounds of convenience and economy, have let the tenant for life into possession; (2) that the Settled Land Acts afforded additional grounds for doing so; (3) that the tenant for life ought to have leave to exercise the powers of the Acts other than those of sale and exchange; (4) that the tenant for life must pay the costs, there being no case against the trustees; (5) that the owner of the rentcharge was not a necessary party to the application.—*Bagot v. Kittoe*, 42 W.R. 170.
- (iv.) **C. A.—Sale—Discharge of Incumbrances—Two Estates devolving differently—Settled Land Act**, 1882, ss. 2 (3), 21 (ii), 22 (2) (5), 53.—A testator devised estates A. and B. to his son for life, with remainder to such of his son's children as should attain twenty-one. Estate A. was mortgaged in fee, and estate B. was unincumbered. Part of B. was sold by the tenant for life, and the purchase-money was applied in part discharge of the mortgage on A. The tenant for life died and the contingent remainders failed with respect to B. The heir-at-law,

on whom B. devolved, claimed a charge on A. for the money which had been applied in part discharge of the mortgage, on the ground that, as the estates had devolved in different ways, they were not part of the same settled estate. *Held*, that there was one settlement and one settled estate, that capital money arising from one part of the estate was properly applied in the discharge of an incumbrance affecting the other part, and that the claim of the heir-at-law failed.—*Freme v. Logan*, L.R. [1894] 1 Ch. 1; 69 L.T. 613; 42 W.R. 119.

See Practice, p. 55, i.

### Settlement:—

- (i.) **C. A.—Construction—Forfeiture—Trust till Bankruptcy or Death—Limitation over on Death—Implication—Interim Income.**—By a marriage settlement certain funds belonging to the wife were settled upon trust to pay the income to her for life, and after her death to the husband until he should become bankrupt or alienate the same, or until his death, whichever should first happen; and after the death of the survivor of the wife and husband, then upon trust for the children of the marriage. The husband became a liquidating debtor, and then the wife died, leaving him surviving. *Held*, that the limitation over had taken effect, and that the trust fund went over to the children on the death of the wife.—*Roberts v. Akeroyd*, L.R. [1893] 3 Ch. 363; 63 L.J. Ch. 32; 69 L.T. 474.

### Sheriff:—

- (ii.) **Q. B. D.—Execution for more than £20—Sale by Private Contract—Bankruptcy Act, 1883, s. 145.**—Where a sheriff under an execution for a sum exceeding £20 sells the debtor's goods by private contract with the consent of the debtor but without the leave of the Court, such sale is, until set aside by the Court, valid as against a subsequent execution creditor.—*Crawshaw v. Harrison*, L.R. [1894] 1 Q.B. 79.

### Ship:—

- (iii.) **P. D.—Bill of Lading—Negligence Clause.**—By charter-party and bill of lading the defendants were exempted from liability for damage to cargo arising from dangers and accidents of the sea or other waters, and all accidents of navigation, even when occasioned by the negligence, &c., of the master or other servants of the shipowner, but it was provided that unless stranded, &c., the defendant should not be exempted from liability for damage to cargo caused by improper opening of valves. While the ship was in harbour a valve was properly opened, but improperly and negligently left open, whereby water entered and damaged the cargo. The vessel was towed into shallow water, when she took the ground, and the water was pumped out. *Held*, that the negligence clause applied to "accidents of the sea or other waters" as well as to "accidents of navigation," and that the words "unless stranded, &c.," constituted a condition preventing liability attaching to the shipowner. *Semble*, that the damage was an "accident of navigation," although the ship was in harbour.—*The Southgate*, L.R. [1893] P. 329.
- (iv.) **C. A.—Charter-party—Advance Freight—Freight payable on Signing Bills of Lading—Loss before Bills Signed—Liability of Charterer.**—A charter-party provided that one-third of the freight was to be paid on signing bills of lading, which were to be signed within twenty-four hours after the cargo was on board. The ship sank and the cargo was lost before the bills of lading were signed. The charterers refused to present the bills of lading for signature, and the shipowner sued them for breach of contract. *Held*, that the charterers were

bound to present the bills of lading for signature, and that the ship-owner was entitled to damages equal to the amount of advance freight.—*Oriental Steamship Co. v. Tylor*, L.R. [1893] 2 Q.B. 518; 69 L.T. 577; 42 W.R. 89.

- (i.) **Q. B. D.**—*Charter-party—Demurrage*.—"Restraints of Princes and Rulers."—A ship was chartered to load nitrate at Iquique in Chili at the rate of 200 tons per day from the day she was ready to receive cargo to the day of despatch, "restraints of princes and rulers, political disturbances or impediments, during the said voyage, mutually excepted." From January 29th to March 5th it was impossible to load nitrate at Iquique owing to civil war. After March 5th it was possible to load at Iquique, but there was only a small quantity of nitrate stored there, and further supplies could not be obtained owing to the civil war until March 23rd. The vessel then loaded and sailed on April 8th. She put into another port for coal, which was very dear at Iquique, and was there detained, owing to a claim by one of the hostile parties for export duty, which had been already paid to the other party. The shipowners claimed demurrage. *Held*, that the delays fell within the exception in the charter-party.—*Smith and Service v. Rosario Nitrate Co.*, L.R. [1893] 2 Q.B. 323.
- (ii.) **C. A.**—*Charter-Party—Demurrage—Strikes*.—By charter-party it was agreed that a ship should proceed "to London, either to the Pool, Regent's Canal, Victoria Docks, Dorricks, or Beckton," as ordered by the charterers, eighty-four hours being allowed for loading and discharging the cargo, "strikes of workmen at the port of loading or discharging excepted." The charterers ordered the ship to proceed to the Regent's Canal. After she started a strike of workmen occurred at the Regent's Canal, of which the charterers were aware in time to have ordered the ship at Gravesend to proceed to one of the other places named. They did not do so, and owing to the strike the lay days were exceeded. Had they changed the destination the cargo could have been delivered without delay. *Held*, that the charterers were protected by the exception, and were not liable for demurrage.—*Bulman v. Fenwick*, 69 L.T. 651.
- (iii.) **P. D.**—*Charter-party—Time for Discharge—Despatch Money—Sundays and Fête Days excepted*.—A ship was chartered to carry a cargo of coals to be discharged at a given rate per day (Sundays and fête days excepted), and if sooner discharged, a payment to be made for every hour saved. *Held*, that Sundays and fête days were to be excluded in the computation both of the time allowed and of the time saved, so that despatch money was payable only on the difference between the number of hours actually occupied in discharge and the number of hours allowed by the charter-party.—*The Glendevon*, L.R. [1893] P. 269; 62 L.J. P. 123.
- (iv.) **H. L.**—*Collision—Overtaken Vessel—Third Vessel—Regulations, Arts. 20, 22, 23*.—Decision of C. A. (*see* Vol. 18, p. 134, iv.) affirmed.—*The Saragossa*, 69 L.T. 664.
- (v.) **H. L.**—*Collision—Fog—Regulations, Art. 8*.—Decision of C. A. (*see* Vol. 18, p. 100, i.) affirmed.—*The Lancashire*, 69 L.T. 663.
- (vi.) **P. D.**—*Collision—Principal Cause—Cross Cause—Practice—Security—Admiralty Court Act, 1861, s. 34*.—In a collision between the plaintiff's

against the plaintiff's vessel, and bail was given. were consolidated, and the defendant made counter-claimant. The plaintiff applied for security. *Held*, that there was no power to grant the application.—*The Rougemont*, L.R. [1893] P. 275; 62 L.J. P. 121.



- (i.) **P. C.**—*Collision—Sunken Wreck—Port Authority—Liability—Maritime Lien.*—Where the owners of a sunken wreck remained in possession thereof, but the port authority undertook but neglected the duty of indicating its position so as to secure ships entering the port from the danger of colliding with the wreck, *held*, that neither the owners nor the wreck were liable for a collision which ensued. The control of the wreck had been legitimately transferred to the port authority, and in the absence of negligence on the part of the owners no maritime lien arose. The colliding ship having been navigated in circumstances of peril with reasonable care and skill, *held*, that it was not answerable for the collision.—*Owners of Utopia v. Owners of Primula*, L.R. [1893] A.C. 492; 62 L.J. P.C. 118
- (ii.) **H. L.**—*Damage to—Jurisdiction—County Court—Collision with Dock Wall—County Courts Admiralty Jurisdiction Acts, 1868, s. 3; 1869, s. 4.*—*Held*, reversing the decision of C. A. (*see* Vol. 17, p. 148, i.) that the county court had jurisdiction to try an action for damage to a ship by collision with an object which is not a ship, such as a dock wall—*Mersey Docks and Harbour Board v. Turner*, L.R. [1893] A.C. 468; 69 L.T. 680.
- (iii.) **C. A.**—*Insurance of Chartered Freight—Perils of the Sea—Breakdown—Material Fact—Non-Communication.*—By charter-party, a vessel was hired for three months, the payment of hire to cease, in case of a breakdown delaying the ship for more than twenty-four hours, until she should be efficient. By a slip initialled by the defendant, the risk to be covered was described as chartered freight for three months, diminishing one-third each month. A policy was executed, the perils being "perils of the seas," &c., in the usual form. The vessel had to be towed into harbour during the three months, owing to the shaft breaking. *Held*, that the damage was due to perils of the seas; that the loss due to the postponement by delay fell on the policy, although the plaintiff might ultimately earn the whole freight; and that although the defendant was not told of the clause of cesser, this was not a non-communication of a material fact, as such a clause is universal in a time charter, and the description on the slip was sufficient to give notice that the freight insured was freight under a time charter.—*The Bedouin*, L.R. [1894] P. 1.
- (iv.) **C. A.**—*Insurance—Lloyd's Policy—Memorandum—"Burnt."*—Decision of P. D. (*See* Vol. 18, p. 135, ii.) affirmed. *Held*, also, that it cannot be laid down as a definition applicable to every case that a ship is "burnt" within the meaning of the memorandum, whenever the injury by fire is sufficient to render her temporarily innavigable. Whether a partial burning constitutes a "burnt" ship or not is an inference to be drawn in each case from the particular facts.—*The Glenlivet*, 69 L.T. 706; 42 W.R. 97.
- (v.) **P. D.**—*Salvage—Uncompleted Services—Surrender to other Salvors at Desire of Salvaged Ship—Compensation for Loss in not Completing Services.*—When a ship, having rendered salvage services, is in a position to render further valuable services but is superseded, at the desire of the salvaged ship, by another ship which is chosen to complete the service, the Court, in awarding salvage to the first salvors, will consider not only the services actually rendered, but those which they were able and ready to perform.—*The Maasdam*, 69 L.T. 659.

#### Solicitor:—

- (vi.) **Q. B. D.**—*Unqualified Person—Acting as Solicitor—Attachment.*—A person unqualified as a solicitor, who described himself as an architect and surveyor, was employed as agent to negotiate about a lease. There was an action against his employer with reference to the lease. He

charged his employer in his bill of costs with "at your request attending the Law Courts and paying the necessary Court fees incidental to putting in a personal appearance to the action. Bringing forms to you and obtaining your signature, and depositing same in accordance with standing orders. Obtaining and paying for copies in duplicate and forwarding same to Messrs C. and Sons, requesting statement of claim." *Held*, that the unqualified person had acted as a solicitor contrary to the Solicitors' Acts, but that no order should be made against him except that he should pay the costs of the application.—*In re Hall*; *e. p. Incorporated Law Society*, 69 L.T. 385.

See Practice, p. 55, iii.

### Stockbroker :—

- (i.) **C. A.**—*Sale or Purchase of Stock—Contract Note not Sent to Principal—Right to Commission.*—A broker who has bought or sold securities on the Stock Exchange for his principal, is not prevented from recovering his commission on such purchases or sales by the fact that he has omitted to send to the principal any stamped contract notes in conformity with the Customs and Inland Revenue Act, 1888, s. 17, sub-s. 1 (1).—*Leahey v. Bracken*, L.R. [1894] 1 Q.B. 114; 69 L.T. 668; 42 W.R. 196.

### Tenant for Life :—

- (ii.) **C. A.**—*Shares—Reserve Dividend Fund—Capital or Income.*—Shares in a company were settled by will upon trust for A. for life. The company's articles provided that profits over 10 per cent. on the capital should be carried to a reserve fund. The company was wound up, and the assets distributable among the shareholders, including the reserve fund, was sufficient to pay a sum of £1 5s. 6d. per share above the amount paid up on each share. *Held*, that the tenant for life was not entitled to any part of the £1 5s. 6d., but that the whole thereof formed part of the capital of the trust fund.—*Armistage v. Garnett*, L.R. [1893] 3 Ch. 337; 69 L.T. 619.

### Tithe :—

- (iii.) **C. A.**—*Extraordinary—Divided Ownership—Remedy of Owner Paying Whole Tithe—Commutation of Tithes Amendment Act, 1842, s. 16—Extraordinary Tithe Redemption Act, 1886, s. 4, sub-s. 5, s. 9.*—Decision of Q. B. D. (*see* Vol. 19, p. 26, ii.) affirmed.—*Simmonds v. Heath*, L.R. [1894] 1 Q.B. 29; 42 W.R. 122.
- (iv.) **Q. B. D.**—*Rates—Payment by Tenant—Allowance by Tenant—Deduction—Tithe Act, 1891—Interpretation Act, 1889, s. 38, sub-s. 2.*—The Tithe Act, 1891, introduces a new procedure for the recovery of rates on tithes, and the Interpretation Act, 1889, does not keep alive the old procedure. A landlord cannot deduct from the tithe payable to the tithe-owner the amount of rates actually paid by the tenant and allowed to him in paying his rent, even though the rates were due in respect of tithes before the Tithe Act, 1891.—*Jones v. Potts*, 61 L.T. 314.

### Trade Mark :—

- (v.) **Ch. D.**—*Register—Rectification—Calculated to Deceive—Person Aggrieved—Patents, &c., Act, 1883, s. 90.*—B. carried on business in London as a dealer in window glass, which he purchased in Belgium, and shipped to the colonies. In 1876 he registered as a trade mark the device of a star, and his glass was known in the trade as "Star Brand." The respondents, a Belgian glass manufacturing company, in 1890 registered as a trade mark for window glass the words "Red Star Brand." They did not deal directly with the colonies, though

they sent glass to England in cases marked with a red star. *Held*, that the respondents' mark was calculated to deceive, that B. was a "person aggrieved," and was entitled to have the mark expunged. *Held*, also, that an injunction limited to user in the colonies would not have been a sufficient protection.—*In re Trade Mark of La Société Anonyme des Verreries de l'Etoile*, L.R. [1894] 1 Ch. 61; 69 L.J. Ch. 56; 69 L.T. 708.

- (i.) **Ch. D.**—*Similarity to Registered Mark—Disclaimer—Calculated to Deceive—Patents, &c., Acts, 1883, ss. 64, 72, sub-ss. 2, 78; 1888, s. 10, sub-ss. 2, 14, 15*—Where the sole resemblance between a mark submitted for registration and one already registered consisted in the fact that both bore the inscription "Unco Guid," but any right to the exclusive use of these words had in each case been disclaimed, and the mark submitted for registration had been in use for several years under the erroneous belief that it was already registered, the Court directed the mark to be registered, being of opinion that it was not calculated to deceive, and that the *bona fides* of the applicant was shown by the circumstances.—*In re Loftus' Trade Mark*, 63 L.J. Ch. 52; 69 L.T. 690.

#### **Tramway :—**

- (ii.) **Ch. D.**—*Parliamentary Deposit—Repayment—Evidence of Abandonment—Parliamentary Deposits and Bonds Act, 1893, s. 1.*—The Court will not, on the abandonment of a tramway, order the payment out of the parliamentary deposit, except on production of notice of abandonment published by the Board of Trade in accordance with the Tramways Act, 1870, s. 18, unless it appears beyond all dispute that such notice cannot be forthcoming.—*In re Dudley and Kingswinford Tramways*, 69 L.T. 711; 42 W.R. 126.

#### **Trustee :—**

- (iii.) **C. A.**—*Breach of Trust—Advance on Mortgage—Insufficient Security—Consent of Tenant for Life—Trustee Act, 1888, ss. 4, 5, 6, 8.*—*See* Vol. 18, p. 138, ii. Decision of Ch. D. affirmed, but *held*, that the life interest of the tenant for life in the whole trust estate could not be impounded to indemnify the defendants, but that they should retain the interest on so much as was required to make good the deficiency on the mortgage.—*Somerset v. Earl Poulett*, 63 L.J. Ch. 41; 42 W.R. 145.
- (iv.) **Ch. D.**—*Maintenance—Discretion of Trustees—Interference with.*—A testator directed that, after the decease or second marriage of his widow L., his trustees should apply the whole, or such part as they should think fit, of the income of any child's share of the testator's residuary estate for or towards such child's maintenance, and appointed L. and four others to be trustees. L. married again, but the infant children of her marriage with the testator continued to live with her. The infants applied that the trustees might be ordered to make an allowance for their maintenance. *Held*, that there was no absolute trust to apply any part of the income towards such maintenance, but a discretionary trust carrying an obligation to entertain and consider the question, and a discretion in the exercise of the duty; and that the Court would not overrule the discretion of the trustees, who had in the honest exercise of their discretion refused to make an allowance.—*Bryant v. Hickley*, 42 W.R. 183.

*See* Limitations, p. 48, iii.

#### **Vendor and Purchaser :—**

- (v.) **C. A.**—*Conditions of Sale—Clean Title—Conveyancing Act, 1881, s. 70.*—Land was sold under an order of the Court. The conditions gave notice that it was subject to mortgages to a large amount, that the

first mortgagee would join in the conveyance and release his charge, but that no subsequent incumbrance would be released, and that the purchaser should not require the concurrence of any person having only an equitable interest bound by the order for sale, other than the vendor. The vendors tendered a conveyance to the purchaser in fee discharged from the first mortgages but, "subject to such equity of redemption as is not by these presents released." This restriction was added by the first mortgagees who were not before the Court. *Held*, that the purchaser was entitled to a conveyance of an estate in fee simple free from incumbrances, and that in default he was not bound to complete.—*Mostyn v. Mostyn*, L.R. [1898] 3 Ch. 376; 62 L.J. Ch. 959; 42 W.R. 16.

- (i.) **C. A.**—*Covenants for Title—Construction*.—A vendor's covenants for title are to be construed literally, and without any restrictions, which are not expressly mentioned. Therefore where the covenants are wide enough to apply to a defect in the title which is disclosed by a recital in the conveyance, they do so operate in law.—*Page v. Midland Railway Co.*, L.R. [1894] 1 Ch. 11; 42 W.R. 116.

### Waterworks:—

- (ii.) **H. L.**—*Sale to Local Authority—Basis of Valuation—Price*.—Decision of C. A. (See Vol. 18, p. 104, iii) affirmed.—*Stockton and Middlesborough Water Board v. Kirkleatham Local Board*, L.R. [1898] A.C. 444; 69 L.T. 661.

### Will:—

- (iii.) **Ch.**—*Construction—Contingent Remainder—Failure of Particular Estate—Direction to pay Debts*.—A testatrix, who died in 1875, after directing her debts to be paid by her executors, H. and W., devised a freehold house to H. and W. upon trust to allow H. to use the same for his life, and after his death upon trust for his children as he should appoint, and in default of appointment in trust for such of his children as should attain twenty-one. H. did not appoint the house, and died leaving infant children. *Held*, that the direction to pay debts showed that the trustees were not to be mere devisees to uses, but that the testatrix intended them to have the legal estate, and that consequently the estates given to the children were equitable, and did not fail for want of a particular estate.—*Brooke v. Brooke*, L.R. [1894] 1 Ch. 43; 42 W.R. 186.
- (iv.) **C. A.**—*Construction—Erroneous Recital*.—A testatrix, being absolutely entitled under a will to one-third of a sum of £100,000, by her will after reciting (as the fact was) that she had settled £16,000 part thereof in favour of A., and, erroneously, that she had settled one undivided moiety of the residue of the said one-third in favour of B. and her family, gave the other undivided moiety to C., and gave to him all the residue of her estate and effects. *Held*, that the erroneous recital did not amount to a bequest in favour of B. and her family, and that, as there was no indication of any intention to exclude the fund the subject of such recital from the residuary bequest, it passed to C., and did not fall to the next-of-kin as undisposed of.—*Paton v. Ormerod*, L.R. [1893] 3 Ch. 348; 69 L.T. 399.
- (v.) **C. A.**—*Construction—Share of Residue—Revocation of Gift by Codicil*.—A testator gave his residuary estate upon trust as to two-fifths parts for his daughters M. and A., and all other daughters born in his lifetime equally. By a codicil he declared that the share given to M. should be restricted to a life interest only, and that upon her death it should fall into and form part of his residuary estate. *Held*, that the share of M. after her death did not pass to the next-of-kin as

undisposed of, but went to the other residuary legatees.—*Palmer v. Answorth*, L.R. [1893] 3 Ch. 367; 62 L.J. Ch. 988; 69 L.T. 477; 43 W.R. 151.

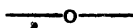
- (i.) **Ch. D.**—*Legacy—Contingent—Severance—Interest.*—Testator gave the residue of his property to trustees upon trust to pay the income to his wife for life or until second marriage, and subject to such trust he directed his trustees to raise and pay to each of his sons J. and F., who should be living at his death, and should attain the age of twenty-one years, the sum of £5,000, and he gave his residue on certain trusts. The widow died, and F. afterwards attained the age of twenty-one. *Held*, that the legacy was contingent. *Held*, also, that the legacy must be severed from the residue as from the death of the widow, but that such severance was not for the benefit of the legatee, but of the residuary legatees, to facilitate the distribution of the estate, and that the legacy therefore did not carry interest.—*Inman v. Rolls*, L.R. [1893] 3 Ch. 518; 62 L.J. Ch. 940; 69 L.T. 874; 42 W.R. 156.
- (ii.) **Ch. D.**—*Remoteness—Invalid Trust for Sale—Conversion.*—A gift to a living person A., if living at the end of forty-nine years, or to her issue if she be then dead and leaving issue, is not too remote. Trust for sale of land at the end of forty-nine years, and gift of the proceeds to a class ascertainable within the limits of the rule against perpetuities. *Held*, that the gift was good, but the trust for sale void, and, therefore, that the beneficiaries took the property as real estate.—*Boven v. Churchill*, L.R. [1893] 3 Ch. 421; 63 L.J. Ch. 54; 42 W.R. 24.
- (iii.) **P. D.**—*Incorporation of Documents.*—Testator left a will of May, 1890, and two codicils. By the will he gave an annuity to his wife, and devised and bequeathed real and personal estate to his trustees upon trust, after payment of debts, &c., to set apart a sum to provide the annuity, which setting apart he directed "to consist of funds or investments belonging to me at my decease, and which the trustees will find noted by me for the purpose." After his death a holograph paper was found, purporting to be instructions to the trustees as to the securities which were to be set aside to provide the annuity. The paper was undated, and was inclosed in an unsealed envelope on which was written by the testator, "Instructions to my executors, June 5, 1890." The codicils were executed in 1891, and did not refer to the instructions. *Held*, that as the language of the will did not refer to the paper as existing at the date of the will, the codicils could not have the effect of incorporating it; and that it must be excluded from probate.—*Durham v. Northen*, 69 L.T. 691.
- (iv.) **P. D.**—*Probate—Clerical Error in Engrossment—Probate with Blank Space.*—A will was engrossed from a draft approved by the testatrix. The engrossing clerk copied the number of one house twice over, and omitted the number of another house. The mistake was not discovered before execution. The Court granted probate with the duplicate number struck out, and a blank in place thereof, but declined to insert the correct number.—*In the goods of Walkeley*, 69 L.T. 419.
- (v.) **C. A.**—*Probate—Revocation—Two partly Inconsistent Wills—Cancellation of Later Will—Revival of First Will.*—Testator by will gave all his property to J., and appointed her sole executrix. By a second will he devised his real estate to E., and appointed her executrix, and did not revoke the first will. He cancelled the second will. *Held*, that the first will was partly revoked by the second, and that the revoked part was not revived by the cancellation of the second will; and that probate must be granted of the first will limited to such part of the testator's property as was not comprised in the second will, and that

there was an intestacy as to the part comprised in the second will.—*In the goods of Hodgkinson*, L.R. [1898] P. 339; 62 L.J. P. 116; 69 L.T. 540.

- (i.) **P. D.**—*Probate—Torn Will—Probate on giving Security.*—A testator, while suffering from brain disease, tore up his will. The pieces were pasted together, and the widow applied for probate with the assent of one of the two sons, the other being absent from England. *Held*, that probate might be granted on the widow giving security to the extent of the absent son's interest in case of intestacy.—*In the goods of Hine*, L.R. [1898] P. 282; 69 L.T. 458.
  - (ii.) **P. D.**—*Probate—Words after Signature.*—A will was written principally on the first page of a printed form, but the last sentence was continued and finished on the second page, the signatures of testator and witnesses being at the foot of the first page. The Court granted probate of the will as contained on the first page, omitting the words on the second page.—*In the goods of Anstee*, L.R. [1893] P. 283; 42 W.R. 16.
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### I.

MAGISTER RICARDUS ANGLICUS, THE PIONEER OF  
SCIENTIFIC JUDICIAL PROCEDURE IN THE TWELFTH  
CENTURY.

THE twelfth century may be aptly designated the Age of Judicial Procedure, inasmuch as that century has been rendered memorable by the revival of the scientific study of Judicial Procedure, which had been neglected during the long night of the Dark Ages, that followed the dissolution of the Roman Empire of the West. It is, however, not known for certain whether Irnerius, who kindled afresh the lamp of learning in the Law School of Bologna, and thereby earned for himself the title of *Lucerna Juris*, when he introduced during the first decade of the twelfth century a novel method of expounding the Justinianean Law Books, a portion of which had been brought from Ravenna to Bologna, left behind him any treatise on Procedure, but none has come down to our time. Bulgarus, however, the Chrysostom (*Os aureum*), as he was termed, of the new School of the Gloss-Writers (*Glossatores*), and the most famous of the pupils of Irnerius, composed a short treatise, *De Judiciis*, which he dedicated to Cardinal Aymericus, who died A.D. 1148. It is probable, therefore,

that we shall be justified in saying that the earliest treatise on Civil Procedure, emanating from the Law School of Bologna, was composed by Bulgarus, who died A.D. 1166. The history of this treatise is both singular and interesting, and its renown has been furthered by the blunder of a certain Nicolaus Rhodius, of Kamberg, who edited it at Mayence\* in the sixteenth century from a MS., which contained a remarkable work by Placentinus, entitled *De Varietate Actionum*, and several other treatises, which he supposed to be a continuation of that work. The researches, however, of F. C. von Savigny have established the fact that the first two chapters of the volume edited by Rhodius, contain the whole of the treatise of Placentinus, and that the short treatise, which forms the third chapter of the volume, is not part of the original work of Placentinus, but is the treatise, *De Judiciis*, of Bulgarus, of whom Placentinus is with good reason believed to have been a pupil. The treatise of Bulgarus, which F. C. von Savigny has pronounced to be the most ancient work extant of the school of the Gloss-Writers, has been edited by Professor Agathon Wunderlich in his *Anecdota, quæ processum civilem spectant*, published at Göttingen in 1841.

Placentinus, who derived his name from his native city of Placentia, was not popular amongst his brother-professors at Bologna, and the mantle of Bulgarus appears to have fallen on the shoulders of Johannes Bassianus, the author of the celebrated *Arbor Actionum*, whose short treatise on procedure, known as the *Summa, Quicunque Vult*, in which he combats an opinion of Placentinus, has been thought worthy of a place in the Appendix to the fifth volume of F. C. von Savigny's magistral work on the "History of the

\* *Placentini. Juris-consulti vetustissimi de varietate actionum libri sex . . . cum Præfat. Nic. Rhodii. Mogunt. anno MDXXX.—ex ædibus Joannis Scheffer mense Febr. anno MDXXX.*

Roman Law in the Middle Ages,"\* published at Heidelberg in 1829.

It would seem that the *Summa* of Johannes Bassianus maintained its great reputation in the Law School of Bologna, as the master-treatise on Procedure, until the last decade of the twelfth century, when an Englishman, who had attained the high position of a *Magister Decretorum*, initiated a more scientific method of treating the subject of Procedure, having access to authorities, which either were not in existence when Johannes Bassianus composed his *Summa*, or were not accessible to him for the purpose of consultation. This Englishman's memory has been kept alive by a notice of his work, which dates back to the early years of the thirteenth century, when his laurels were still green at Bologna, and when Tancredus, a Canon of the Cathedral Church of Bologna and a pupil of Azo, so well known to English jurists, was, so to say, director of the studies of the Law School, and was called upon by his colleagues, whom he addresses as "*Carissimi Socii*," to draw up a treatise on Judicial Procedure for their use and guidance. Tancredus complied with their request, and it is to the treatise composed by him on this occasion, somewhere about A.D. 1215, that we are indebted for our knowledge of the distinguished career of Magister Ricardus at Bologna. The treatise of Tancredus is of great historical value in the present day, and it has been ably edited by Professor Frederic Bergmann at Göttingen in 1842.†

Tancredus commences his treatise by observing that he has undertaken a work of an arduous nature, which may be useful to his contemporaries and to posterity, and which Ricardus Anglicus has been the first to treat in the manner

\* *Geschichte des Römischen Rechts im Mittelalter*. Von FRIEDRICH CARL VON SAVIGNY. Heidelberg. 1829.

† *Pillii, Tancredi, Gratii Libri de Judiciorum Ordine*. Edidit FRIDERICUS BERGMANN, *Juris-consultus*. Göttingæ. 1842.

in which he proposes to treat the same subject, namely, in the manner of a compilation, in which passages from the Laws and the Canons will be cited in illustration of each paragraph. It is in reliance on the testimony of Tancredus, who was afterwards nominated by Pope Honorius III. to the Archdeaconry of Bologna and was by a Letter Apostolic constituted Rector of the Law School (A.D. 1226), that Jurists have felt themselves justified in regarding Ricardus Anglicus as the Pioneer, who led the way in advance of the position in which Johannes Bassianus had left the study of Judicial Procedure. The statement of Tancredus on this subject has been thought worthy of transmission to posterity by Johannes Andreæ, no mean authority, who is described on his tombstone in the Church of the Dominicans at Bologna as "*notissimus orbe Johannes*," and who died during the Plague at Bologna in 1348. Johannes Andreæ completed two years before his death his *Additiones ad Durantis Speculum*, and it is in that learned work that he quotes the testimony of Tancredus to the pioneership of Ricardus, and to his having anticipated Pillius in his treatment of the subject of Judicial Procedure. Johannes Andreæ expresses his regret that he had never seen the treatise of Ricardus. Amongst English Jurists, Dr. Arthur Duck, an eminent member of the College of Advocates in London and a Fellow of All Souls College, Oxford, who published in the sixteenth century an able treatise "On the use and authority of the Civil Law of the Romans in the dominions of Christian Princes," \* quotes Johannes Andreæ as his authority, for enumerating Ricardus Anglicus and Gulielmus de Drogheda amongst the Professors of Law at Oxford, and as the authors, the one of a *Summa*, and the other of a *Libellus de Ordine Judiciorum*.

\* *De Usu et Autoritate Juris Civilis Romanorum in Dominiis Principum Christianorum. Authore Authuro Duck, LL.D. Londini. MDCLIII.*

It would be superfluous to quote any other medieval writers on Roman Law, as they do not supply any original information on the subject of the *Ordo Judiciarius* of Ricardus Anglicus, but the possible existence of a MS. of the work itself in the present day was made known in 1830 by the publication at Leipzig of a general catalogue of all the MSS. then extant in the various public libraries of Europe, compiled by Professor Gustavus Haenel, who has entered on his list of MSS. preserved in the Public Library at Douai in France, "*Ricardi Ordo Judiciarius*, membr. fol." This entry, although somewhat meagre, has had important consequences, as Professor Wunderlich of the University of Göttingen\* rightly divined the authorship of this MS., which was at first attributed to Richard of Pisa, and in his work on Civil Procedure above-mentioned, suggested that any jurist, who should visit the Public Library at Douai, would do well to examine the MS. described in Professor Haenel's Catalogue as *Ricardi Ordo Judiciarius*, as by chance there might be hidden under that title the treatise of Ricardus Anglicus, who was the first to compose an *Ordo Judiciarius* according to the testimony of Tancredus.

It was upon this suggestion on the part of Professor Wunderlich, that Professor Charles Witte, of the University of Halle, undertook a journey to Douai in 1851, with the object of examining the manuscript which Professor Wunderlich had remarked in Professor Haenel's Catalogue, and he was so fortunate as to find in charge of the Public Library at Douai, M. Duthilloëul, the erudite librarian, who had meanwhile completed a descriptive catalogue of all the MSS., which had been printed at the expense of the municipality of Douai, and to which a scientific account of the chief medieval law-treatises preserved in the Library had been appended by M. Tailliar, Conseiller à la Cour Royale de Douai. Both of these

\* *Anecdota, quæ processum civilem spectant. Göttingæ. MDCCCLXI.*

eminent men took the greatest interest in furthering the design of Professor Witte, who succeeded in deciphering the text of the Manuscript of Ricardus, which had been noticed in Professor Haenel's Catalogue, and made it known to the World of Letters through the Press at Halle, under the title of *Magistri Ricardi Anglici Ordo Judiciarius, ex Codice Duacensi, olim Aquicinctino, nunc primum editus per Carolum Witte, juris-consultum Halensem* (Halis. C. E. M. Pfeffer, MDCCCLIII.).

Professor Witte has thus described the Manuscript:—  
*"Exhibet vero Codex Duacensis, olim Monasterii Aquicinctini (Anchin), membranaceus, nunc numero (580) insignitus, Ricardi Ordinem Judicarium, octo foliis majoris formæ bipartitis, caractere gothico minutiore, scripturæque compendiis satis referto, sæculo, uti videtur XIII. ineunte exaratum. Innumera tamen, quæ summam librarii produnt barbariem, scripturæ vitia impediunt, quo minus Codicem vel autographum vel ab autographo putemus desumptum."*

Professor Witte, having thus described the Douai Manuscript, which was formerly in the neighbouring monastery of Anchin, and which, upon the destruction of that monastery amidst the political troubles of France in the last years of the eighteenth century, found a home with many other MSS. in the Public Library of Douai, proceeds in his preface to give some account of the personality of Ricardus, and is tempted to repeat with some hesitation the story told by Pancirolus in his historical work, *De Claris Legum Interpretibus*, published at Venice in 1637.\* This work had a great literary reputation, being the first of its kind, but it is notorious for its numerous errors, which F. C. von Savigny has declared to be little less than scandalous. It appears in this instance that Pancirolus, who was a native of Reggio,

\* The latest edition of the work of Pancirolus has been published by Chr. G. Hoffmann, at Leipzig, 1721, under the original title, *De Claris Legum Interpretibus*.

and who died at Padua in 1599, having discovered that the surname of Ricardus was "Poor," which was Latinised as "Pauper," assumed that he had acquired that surname at Bologna from his poverty, and he has put in circulation the story that Ricardus was so poor when he first came to Bologna that he was obliged to be content with occupying a single chamber with two other students, and that they had only one scholastic hood (*capitium*) amongst them, which they used in turns, so that whilst one of them attended a professorial lecture his two chamber-fellows had to remain at home. Pancirolus goes on to say that he is puzzled to account for the fact that this same Ricardus, to whom the surname of *Pauper* stuck during his lifetime from the circumstance of his great poverty when he first came to Bologna, afterwards became Bishop of Chichester in England. Professor Witte also appears to have been somewhat perplexed by this story, which seems to have staggered Sarti likewise, who, on the authority of Pancirolus, repeats it in his work *De Claris Archigymnasii Bononiensis Professoribus*, published at Bologna in 1769.\* Sarti, however, cautions his readers by observing that Pancirolus quotes no authority in support of his story. "*Nulla tamen veterum monumentorum fide subnixus.*" It is perhaps only fair towards Pancirolus to bear in mind that his work was published by his nephew, Octavius Pancirolus, 38 years after his uncle's death, and that we have no reason to believe that its contents were submitted to any revision on the part of his uncle before his death with the view of preparing it for publication. Pancirolus, however, seems to have been convinced that the funds at the disposal of Ricardus were very scanty, as he writes: "*Septennio Bononiæ juri operam dedît, admodum pauper.*"

\* Published after his death by the Abate Mauro Fattorini from documents in the Archives of the Vatican by command of Pope Clement XIII.



We have no information which enables us to fix the precise time at which Ricardus commenced his residence in Bologna, but he had to reside seven years before he could be admitted to the *status* of a *Magister Decretorum*.\* We know that the subject of Judicial Procedure did not at that time form any part of the ordinary course of Lectures, which were read in the Law School during the morning, and which were limited to the *Digestum Vetus* and the *Code*, and which towards the latter part of the twelfth century comprised the *Decretum* of Gratian. Passages selected from all these treatises are cited, *pro re nata*, in the *Ordo* of Ricardus, but in composing his *Ordo*, Ricardus had to range over a much wider field in search of authorities, and to those authorities we shall allude further on. Meanwhile, it is of importance to fix the time, if we can, at which Ricardus composed his *Ordo*. Unfortunately the legal document which Ricardus has inserted in his treatise with a view most probably of making known the epoch at which it was composed, in accordance with the general practice of medieval law-writers, has been mis-dated by the scribe of the Douai MS., who has inserted in that document the date of "*anno ab incarnatione Domini MCXX.*," which would be at least half a century before Ricardus was born. Professor Witte has suggested a slight correction of this date, and has proposed that we should read MCXC. (1190) in lieu of MCXX. A preferable solution, however, of this difficulty has been unexpectedly supplied by the discovery of an independent MS. of the *Ordo* of Ricardus in the Royal Library at Brussels by Sir Travers Twiss, the author of the present memoir, under circumstances which he must beg the reader's permission to narrate in the first person.

\* There was, properly speaking, at this time no University at Bologna qualified to grant degrees in the faculties of Law and Medicine, &c., but only a School of Law, in which there were lecturers and pupils, *magistri et scholares*.

I was examining in the year 1885 a MS. of the Greek Paraphrase by Theophilus of the Institutes of Justinian, which is preserved in the Royal Library at Brussels, and is numbered (7020-21), with a view to ascertain if it gave any countenance to the modern system of dividing the chapters of the Third Book of the Latin text of the Institutes, when M. Charles Ruelens, the courteous Keeper of the MSS., whose recent death his friends most deeply deplore, brought to me a volume (No. 131-134) respecting which nothing was known whence it came, beyond the fact that it was marked with the stamp of the celebrated Burgundian Library. I undertook at once the task of verifying its contents, which are written in very small Italian characters, and my surprise was great, when I read the title prefixed to the treatise with which the volume commences. It was as follows :—" *Incipiunt Generalia quæ vulgo Brocarda dicuntur a Domino Otone composita, et eorundem discordantium concordantia,*" each word being much abbreviated. On examining the text of this treatise I found to my great surprise that I had discovered a treatise, which had eluded the researches of F. C. von Savigny, namely, "the *Brocarda* of Otto of Pavia," the pupil of Placentinus, and the master of Carolus de Tocco. Sarti, in his life of Damasus, a juris-consult of the thirteenth century, whose *Summa de Ordine Judiciario* has also a place in the Library of Douai, has spoken of the *Brocarda* of Otto Papiensis, and F. C. von Savigny has quoted in a note the words of Sarti, with the additional remark that "Sarti is in error in supposing that Otto ever composed *Brocarda*." The volume, however, in the Royal Library of Brussels may contribute, it is to be hoped, to re-establish the credit of Sarti. The next succeeding folio of the MS. contains a portion of the *Summa* of Johannes Bassianus, the text of which differs in some respect from the text as printed in the Appendix to the fifth volume of F. C. von Savigny's great work,

to which I have already alluded. There follow next in order various short treatises, severally thus described : "*Super articulo de Regulis Juris, et super libro Institutionum, et super Codice D. Justiniani cadunt sequentia scripta.*" This brings the reader to the 104th folio of the volume, the text of which commences thus: "*Incipit Ordo Judiciarius Magistri R.*" The treatise which follows this title occupies fourteen pages in double columns of seventy-four lines each, and concludes the volume. Being happily familiar with the text of Professor Witte's edition of the Douai MS. I had no difficulty in recognising at once the treatise as the *Ordo Judiciarius Magistri Ricardi Anglici*, and it at once occurred to me that I ought not to lose an opportunity of comparing the text of this newly discovered MS. with the text of the Douai MS., of which I had a print in London, and which Professor Witte, as already mentioned, has declared to be full of clerical errors. On enquiry, however, I learnt that I should have some difficulty in finding a competent expert at Brussels, who would have leisure to undertake to transcribe the MS.

Whilst I was in this difficulty M. Charles Ruelens came to my assistance in the kindest manner, and was so obliging as to send over the MS. to England. I have thus been enabled not merely to have the Burgundian text of the *Ordo* transcribed by a skilful expert, but to have the MS. itself autotyped by a process approved by my esteemed friend Dr. E. Maunde Thompson, the Principal Librarian of the British Museum, and an Honorary Fellow of University College, Oxford.

The result of this is that the Burgundian MS., although full of abbreviations, may be safely described as more free from clerical errors than the Douai MS., whilst the special document, to which I have called attention, as being mis-dated in the Douai MS. and for which Professor Witte has suggested a slight correction, exhibits a much more recent

date, namely, "*Anno ab Incarnatione Domini MCXCVI.*," that is A.D. 1196 in the place of A.D. 1120. This fact brings the document, as suggested by Professor Witte, into accord with the practice of mediæval Jurists, who were accustomed to insert in their works one or more legal documents so dated as to reveal the time at which the work was commenced or completed, and of which practice the *Tractatus de Legibus et Consuetudinibus Regni Angliæ*, ascribed to Ranulf de Glanville, the illustrious Justiciar of King Henry II. of England, is a notable instance. The date of A.D. 1196, which the Burgundian MS. exhibits in the section of the MS. which is headed in Professor Witte's edition "*De Sententiis*," is in harmony with the statement of Tancredus, that Ricardus anticipated Pillius, and was the first to draw up a Treatise on Procedure, in which each paragraph is supported by a passage from a Law or from a Canon.

The evidence of Tancredus on this point of priority is valuable, for Tancredus is said to have attended when young the lectures of Pillius on Civil Law at the same time with Ricardus, and must have had a personal knowledge of the mutual relations between Pillius and his English pupil. Pillius was in fact well-known in England in the latter part of the twelfth century, having been the advocate of the monks of Canterbury in an Appeal made by them to Pope Urban III. at Verona, in 1187, against Archbishop Baldwin of Canterbury. Peter of Blois, Archdeacon of London, was the advocatè of the Archbishop on that occasion, and an account of the Appeal has been preserved in the Chronicle of Gervasius Dorobornensis, which is printed in the collection of *Historiæ Anglicanæ Scriptores Decem*, edited by Sir Roger Twysden, London, 1652, p. 1497. The case on the other hand of the monks of Canterbury, as drawn up by a Civilian, is amongst the *Epistolæ Cantuarienses*, p. 520, which have been edited for the Master of the Rolls by Dr. William Stubbs, now Lord

Bishop of Oxford, from a MS. in the Archi-episcopal Library at Lambeth. It is remarkable that neither Benedictus Abbas, nor Roger de Hoveden make any mention of this important Appeal in their respective Chronicles. Herbert Pauper, the elder brother of Ricardus, was at that time Archdeacon of Canterbury, which circumstance may account for his younger brother attending the lectures of the famous advocate Pillius, who gave a practical lecture on the conduct of causes every Saturday. A collection of these lectures, which were termed *Questiones Sabbatinæ*,\* is extant in the present day. With regard to the Archdeacon himself, he had been advanced to the see of Salisbury sometime before Ricardus returned to England.

We may pause here for a moment in order to appreciate more clearly the personality of Ricardus, as we have alluded to his elder brother Herbert. They were the sons of Richard of Ilchester, whom Professor Stubbs, now Lord Bishop of Oxford, describes in his *Constitutional History of England*† as commencing his career as a clerk in the Curia Regis and in the Exchequer from the beginning of the reign of Henry II., and as becoming Archdeacon of Poitiers, before 1164, and as having been made in 1174 Bishop of Winchester, in which city the King's treasure was preserved. We find him mentioned as Bishop of Winchester in the *Dialogus de Scaccario*,‡ and as sitting in the Exchequer on the right hand of the President, and as paying great attention to the computations. We know also from other sources that he was one of the confidential advisers of King Henry II., and was, conjointly with John of Oxford,

\* F. C. von Savigny states that there are several printed editions of the *Questiones Sabbatinæ* of Pillius, the text of which is in perfect harmony with the MSS.

† Library Edition, 8vo., Vol. 1., Oxford, at the Clarendon Press, 1880, note on p. 529, ch. xii. Pipe Roll, pp. 30, 31, 98.

‡ Drawn up by Richard Fitz-Nigel, Bishop of London, and great nephew of Bp. Roger, of Salisbury, and preserved in the Red Book of the Exchequer.

subsequently Bishop of Norwich, Secretary to the Embassy which the King sent to Pope Alexander III. after the death of Archbishop Becket. Further, he was constantly employed as a Justice Itinerant, or as a Baron of the Exchequer, and was for two years Justiciar of Normandy. His sons, however, seem to have laboured under the disadvantage of having been born after their father had received the tonsure, as they had to obtain dispensations from Rome, "*ob defectum natalium*," before they could be advanced, the one to a Bishopric, and the other to a Deanery. Each of them had the *cognomen* of Pauper, but that strange *cognomen* belonged peculiarly to the family of the great Roger, Bishop of Salisbury, the Justiciar of England in the reign of King Henry I.

There can be little doubt that Richard of Ilchester, Bishop of Winchester, was not a poor man, when he died, on 21st December, 1188. His eldest son, Herbert, was at the time of his father's death Bishop of Salisbury, and he had been previously elected by the Canons of Lincoln during his father's life-time, in 1186, to the Bishopric of Lincoln, but King Henry II. on that occasion refused to approve his election because he was sufficiently rich.\* With a father and a brother so circumstanced we can hardly believe the story that Ricardus was in such poverty as a student at Bologna that he and his two chamber-fellows were obliged to content themselves with a single scholastic hood (*capitium*), which each wore in his turn to enable him to attend a Professor's lecture. Their student life may have been peculiar, but if it is permissible to conjecture the reason of any such eccentric attendance on their part at the Professorial Lectures, the two absent members of the triad, who remained at home, were probably engaged, the one in dictating passages from MSS. to be inserted in the *Ordo*, and the other in writing them down,

for there can be little doubt that the scribes of MSS. in the twelfth century wrote from dictation, and that the variations of spelling in versions of the same treatise which are so remarkable in MSS. of the twelfth and thirteenth centuries, are attributable to the fact that the scribes trusted to their ears and not to their eyes in the matter of orthography.

This conjecture, if there be any substratum of fact in the story of Pancirolus, may be said to derive some colourable support from the circumstance that the text of the Justinianean Law Books, which are cited by Ricardus in support of each paragraph, is of a kind which was in use at Bologna before the text was revised in pursuance of the Gloss of Accursius. Professor Witte has pointed out a special passage in the section of the *Ordo* of Ricardus, to which is prefixed the title *De Confessis*, in which Ricardus, in illustration of the fifth paragraph, has cited an *Authentica*, which Accursius has rejected as spurious. The Burgundian MS. agrees with the Douai MS. in citing the same *Authentica*, so that there is little doubt that Ricardus had before him a text of the *Code* (Lib. VII., Tit. 59) with an *Authentica* appended to it of a totally different tenor from that which has come down to us in the present day under the authority of Accursius, and is found in the most approved editions of the *Corpus Juris Civilis*, for instance, in the folio edition edited by Simon van Leeuwen, Amstelodami, 1603, and the octavo edition from the Elzevir press, Amstelodami, 1681, which I have before me at the present moment. In fact, I have looked very carefully over the various passages cited by Ricardus from the Justinianean Law Books, and have compared them with the corresponding passages in the two editions above-mentioned, and the general result is to confirm the opinion of Cujacius, that there were MSS. in existence at Bologna in the twelfth century which had been copied from original MSS. other than the Florentine MS., and which

may supply us with many readings. The passage which we are discussing is signally confirmatory of this opinion on the part of Cujacius, for Magister Vacarius, as we learn from a note to Professor Wenck's recondite treatise, entitled *Magister Vacarius, Primus Juris Romani in Anglia Professor*,\* cites this identical passage from the Code with a different *Authentica* on the margin, which *Authentica*, Professor Wenck observes, is not found in the printed editions of the *Code*. I may add that the extracts made by the scribe of the Burgundian MS. from the Justinianean Law Books are fuller and more complete than the corresponding passages in the Douai MS. It must be borne in mind that during the twelfth century every law treatise in use at Bologna was in MS., and that there were at that time no *petiarii*, nor *stationarii*, nor other scholastic officers, whose duty it was, as at a later period, to prepare for the use of the students MSS., of which they had to guarantee the authenticity of the text. The MSS. of the twelfth century, however, have for the most part disappeared, and it is only by a happy accident that a MS. has here and there been preserved, as in the present instance, which indirectly confirms the opinion of Cujacius and of F. C. von Savigny that there were at Bologna in the twelfth century original MSS. of the Justinianean Law Books, which contained a text known as the *litera vetus et communis*, not to be confounded with a subsequent text known as the *litera vulgata*, or as the *litera Bononiensis*, as distinguished from the *litera Pisana*.

Ricardus, for instance, has cited passages from the *Digestum Vetus*, the *Infortiatum*, and the *Digestum Novum*, but he makes no citation from the *Tres Partes*. He cites from the first nine Books of the *Code*, but he makes no citation from the last three Books. He cites various

\* *Magister Vacarius, Primus Juris Romani in Anglia Professor, studiis Caroli F. Ch. Wenck, Jur. Doct. Lipsiæ, sumptibus Hartmanni, MDCCCXX., p. 291, No. 355.*



*Authentica* inserted in the *Code*, and he cites ten passages from the *Institutes*. It may be presumed in the case of the Burgundian MS. that the scribe had a better opportunity for making extracts from the Justinianean Law Books than the scribe of the Douai MS., or that he was himself anxious to have a more complete text of the passages cited by Ricardus from those Books. All the Books above-mentioned were generally accessible to students in the twelfth century in the Professorial Lecture Halls, as we learn from Odofredus that MSS. of all the sources of law which we have enumerated above were brought from Ravenna to Bologna in the time of Irnerius. But Ricardus has also invoked passages from the first and second parts of the *Decretum* of Gratian, and several Decretal Letters of a later origin, which are found in the *Compilatio Prima* of Bernhard of Pavia (1191), or in the *Compilatio Secunda*, which Gilbert and Alanus, both English Canonists, assisted in compiling. There is, however, a difficulty in supposing that Ricardus had recourse to the *Compilatio Secunda* itself, as it was not completed before the year 1210, and it has been thought more probable that he had access to the Appendix of the Third Lateran Council, and was thereby enabled to consult a text of an earlier date than the *Compilatio Secunda*. \* Professor Witte is of this opinion, and the presumption founded on the election of Ricardus to the Deanery of Salisbury in 1198 and his subsequent residence in England, is strongly in its favour.

## II.

THE PSEUDO-ULPIAN (*ULPIANUS DE EDENDO*). THE LATTER  
DAYS OF RICARDUS ANGLICUS.

The inordinate growth of the system of Appeals to the Roman Curia, against which Saint Bernard, Abbot of Clairvaux, addressed in the twelfth century an earnest

remonstrance to Pope Eugenius the Third, his ancient pupil, in his treatise, *De Consideratione* (Lib. III., ch. 2), was one of the principal causes of the general revival in Europe of the Scientific study of Judicial Procedure. It had been found in the preceding century that the advocates who had been trained in the traditions of the ancient Roman Procedure, which had been maintained at Rome and in the Law Schools of certain cities of Northern Italy, had a signal advantage over other advocates in the conduct of Appeals before the Roman Curia, but their method was somewhat antiquated, being based, so to say, on the Theodosian Law System. That system was still in *viridi observantia* on the North side of the Alps in the middle of the twelfth century, and of this circumstance we have a remarkable proof in a treatise generally known as *Ulpianus de Edendo*, or the Pseudo-Ulpianus. The forgotten text of this treatise, which now passes for the most part under one or other of those names, was discovered by Professor Hugo, of Göttingen, in the year 1790, in an anonymous MS. in the British Museum, which is entered in the Harleian Collection, Vol. III., p. 605, No. 2,355, under the title of *Tractatus Ulpiani Juris Consulti Romani de edendis actionibus com notis quibusdam marginalibus*. Its discovery was at once announced to the lettered world in the *Civilistisches Magazin*, Tom. I., pp. 377—380, and the text was soon afterwards edited, in a somewhat imperfect state, by Professors Meywerth and Spangenberg, of Göttingen, as the text of a lost treatise of the great Roman Juris-consult, and this misconception, which had its origin in the circumstance that the words "*Ulpianus de Edendo*" are written on the margin of the Harleian MS. near the commencement of the treatise, was only dissipated by the discovery near the end of the treatise of a brief allusion to the *Code* of Justinian, and of an equally brief allusion to the *Decrêta* (of Gratian) on the subject of Appeals. The latter reference

was at once conclusive that the treatise was composed sometime after the year 1152. The mistake had, however, operated meanwhile to make the treatise famous, and to encourage a search for further MSS., and the result has been that ten or more MSS., none of them precisely identical, have been found in various archives of Europe, all of them being in localities North of the Alps.

In the meantime the authorship of this Treatise is a riddle which has perplexed the most eminent Juris-consults of Europe. Four MSS. are known to exist in England, three of which are in the British Museum,\* and the fourth is in the Library of Holkham Hall, the seat of the representative of Lord Chief Justice Coke. One MS. exists at the Hague, a second MS. at Leyden, and a third at Trèves in the Rhenish Provinces of Prussia, and the text of these two latter MSS. has been edited by Professor Warnkoenig at Ghent. A MS. is also preserved in the National Library of Paris, which formerly belonged to the Collection of the Minister of State, Colbert, and the text of this manuscript was edited, in 1837, by the direction of Professor A. P. Royer Collard, who is described as "*In Cónsultissima Juris Facultate Parisiensi antecessor.*" Three other MSS. exist in France, one at Châlons-sur-Marne, a second at Amiens, and a third at Lyons, which will be mentioned again below. Finally, an excellent edition of this treatise, with copious notes and a critical preface, explanatory of the circumstances under which eight of the MSS. have been discovered, has been edited at Leipzig†

\* An account of these MSS., two of which have been edited by the late C. Purton Cooper, Esq., Q.C., will be found in the Catalogue of the Library of Lincoln's Inn, and also in Professor Haenel's Edition mentioned below.

† *Incerti Auctoris Ordo Judiciorum (Ulpianus de Edendo) e Codicibus et editionibus emendavit, glossis auxit, annotatione critica instruxit GUSTAVUS HAENEL, Lipsiensis. Lipsiæ, 1838, sumptibus Hinrichsii.*

by Professor Gustavus Haenel, the same Professor who first noted down in his Catalogue the *Ordo Judiciarius* of Ricardus Anglicus, and so led to its discovery at Douai, and he inclines to the opinion that the False Ulpianus is the work of Vacarius himself, who was induced by Archbishop Theobald of Canterbury to abandon the Schools of Bologna, and to teach the Civil Law in the Schools of Oxford. Professor M. von Bethmann-Holweg of the University of Bonn favours this view, and I may add that Professor Hugo, who first discovered the treatise, regarded it as the work of a Belgian Jurist or of an Englishman. None of the above MSS., with one exception, have any title or heading prefixed to them, and this exception is found in the case of the Lyons MS., of which M. Caillemer, Dean of the Faculty of Law at Lyons, has given an account in a learned treatise, *Le Droit Civil dans les Provinces Anglo-Normandes au XII<sup>e</sup>. Siècle*, published at Caen in 1883. M. Caillemer states that the MS., which is in the possession of M. Gaspard Bellin, a Judge of the Civil Tribunal of Lyons, is in a hand of the twelfth century, and that there is to it the following heading:—

*“In subjecto opere continetur ordo et forma causarum sive judiciorum, scilicet quomodo secundum juris equitatem tractari et terminari debeant.”*

My object in referring to the False Ulpianus is to appeal to its contents as evidence that the *Ordo Judiciarius* of Ricardus Anglicus constituted a new departure in the scientific study of Judicial Procedure, and introduced the point of the wedge, so to say, of the Justinianean Law Procedure into countries in which certain traditions of the Theodosian Law Procedure were still maintained. For instance, in England we find in a matter of Procedure a tradition of the Theodosian Law System maintained in a law of King Henry I., of which a record has been preserved

by Canciani,\* and which F. C. von Savigny has cited as evidence of certain traditions of the Roman Law being preserved in England. "*Lex 33, Henrici I. de Libro Theodosianæ Legis injuste victus infra tres menses repareret causam, quod si neglexerit, sententia collata perseveret.*" F. C. von Savigny also cites from the *Breviarium Aniani* a passage of the Theodosian Code (Lib. VI., *de Reparat. Appell.* 11, 31), which is confirmatory of Canciani's reference as above, and the existence of this Law in England in the reign of Henry I. makes strongly against the conjecture that the Pseudo-Ulpianus is the work of an English Jurist, for the Pseudo-Ulpianus does not accord with the Theodosian Law on the subject of the "*induciæ*" to be allowed to an appellant. I may add in further illustration of the value of the "False Ulpianus," as supplying evidence that Ricardus Anglicus initiated a new departure in the scientific study of Judicial Procedure, that the author of the False Ulpianus still recognised the two-fold mode of commencing an action, either by an oral summons before witnesses, or by a writ. His words are, "*Editur autem actio vel per denuntiationem præsentibus testibus, vel per scripturam, id est, libellum conventionis.*" On the other hand, Ricardus Anglicus commences his treatise by explaining the various ways of commencing an action according to the ancient practice, and concludes with the paragraph "*sed hodie oportet in scriptis fieri,*" in support of which he cites an *Authentica* of the Emperor Justinian appended to the Code (Liber III., Tit. ix., *De Litis Contestatione*) commencing "*Offeratur ei libellus, qui vocatur ad iudicium, et deinde præbitis sportulis et data fidejussione, xx. dierum gaudeat induciis, in quibus deliberet, cedat vel contendat, vel alium petat iudicem associari, vel recuset, nisi sit ille, quem ipse jam alio recusato, petiit,*" and ending

\* CINCIANI, *Barbarorum Leges Antiquæ cum notis et glossariis*. 5 vols. folio, Venice, 1781-92, vol. IV., p. 379.

"*Litis ergo contestatio contra hoc indultum habita pro nihilo est.*"

It may be presumed that in the twelfth century the Jurists of Bologna considered the oral summons to have fallen into desuetude, as Johannes Bassianus does not recognise it in his *Summa*, *Quicunque Vult*, which we have mentioned above, and a saying of Bulgarus is on record in regard to the "*juramentum propter calumniam*," viz., "*Quod juretur, lege cavetur, in desuetudine tamen habetur.*" On the other hand, the application of the principle of desuetude was not equally, if at all, admitted in England, in like manner as it was in countries where the Roman Law was the foundation of the Common Law.\* Ricardus has accordingly here quoted an *Authentica* of Justinian, *Offeratur ei libellus*, &c., which may be taken to have abrogated the oral summons. In England the non-recognition of desuetude has been explicitly upheld by the King's Courts even so late as in the nineteenth century, when the defendant in a case of murder challenged the appellant to single combat in the Court of the King's Bench, and the Chief Justice of England, Lord Ellenborough, felt himself constrained to admit that the Wager of Battle was still the Law of England†, being unrepealed by Statute, and he decided that the battle should take place unless the Appellant, having considered this decision of the Court, should make no further prayer, that is, should not ask the Court to name a day on which the judicial combat should take place. The Appellant took the hint and made no further prayer, and so judgment was stayed with the consent

\* The Common Law of the Roman Empire on the subject of desuetude is well expressed in the *Digest*, Liber I., Tit. iii., fr. 32, 91. "Quare rectissime etiam illud receptum est, ut leges non solum suffragio legislatoris, sed etiam tacito consensu omnium per desuetudinem abrogentur."

† *Ashford v. Thornton*, Barnewall and Alderson's Reports, Vol. I., p. 405, A.D. 1818.

of both parties. A law was shortly afterwards enacted by Parliament to abrogate the Law respecting the Wager of Battle.

- We have sufficiently trespassed on the patience of our readers by commenting on passages in a MS. of which they have not the text before them. We regret to say that we see no probability at present of the text of the Burgundian MS. being printed, and we may even be asked what is to be gained for Science by publishing a treatise of a primitive character, so to say, while subsequent treatises are accessible in print, which contain the substance of all that is found in the treatise of Ricardus and a good deal more, and the additional matter represents a more mature stage of the subjects discussed. The answer is not far to seek, if it be admitted that the real growth of humanity is to be traced in the history of Nations, and their institutions, and that the simplicity of early forms and ideas is the best introduction to the principles upon which institutions rest, and gives us most help to analyse and solve the complications of form, which institutions assume in the more advanced stages of their historic life. I may mention by way of illustrating my argument the *Ordo Judiciarum* of Tancredus, to whose Rectorship of the Law School of Bologna, A.D. 1226, allusion has already been made, and who has dealt with the subject of Procedure from a standpoint much in advance of that occupied by Ricardus, although the interval of time that separates the completion of the two works barely exceeds the span of life that is supposed to measure the existence of a single generation of men. But a counter-interrogatory may be suggested. Is it nothing to be able to follow the education of the world in its progress from the simplicity of early forms and ideas to the complications of more fully developed institutions, and to be assured of the soundness of the principles on which the institutions are based? Is it

nothing to be able by the aid of two such treatises as those of Ricardus and of Tancredus to measure the progress made in Western Christendom in the course of less than half-a-century in raising the administration of Justice into a science by organising an intelligent and rational system of Procedure so as to render the formation of a scientific Judicature not merely a possibility but a reasonable certainty? Yet such was the task which Ricardus Anglicus initiated, and of which Tancredus may be said to have completed the academic stage, having before his eyes the labours of Ricardus and not disdaining to utilise the stepping stones,\* which Ricardus had been the first to set up to mark the way.

Gehr Justizrath Dr. J. F. von Schulte, Professor of Canon Law in the University of Bonn, in his *History of the Sources and Literature of the Canon Law*,† gives some particulars of the early literary career of Ricardus. He considers him to have completed a treatise on the *Decretum* of Gratian before his return to England, and a MS. of that treatise is preserved at the present time in the Public Library of Douai. It is entitled *Distinctiones super Decreto*, and the opening words are "*Patres Nostri omnes sub nube fuerunt*," after which the author goes on to say that he has previously composed a useful and necessary Order of Procedure. Johannes Andreæ takes notice of this work in his *Additiones ad Durantis Speculum*. Professor von Schulte attributes also to Ricardus a treatise entitled *Glossæ super Compilatione Prima*, and a fourth treatise entitled *Casus Decretalium* and he is disposed to assign to all these treatises a later date than will quite accord with the known history of Ricardus,

\* Professor Witte has noted one hundred and twenty-six instances in the text of the *Ordo* of Tancredus as edited by Bergmann, in which Tancredus has developed a topic of which Ricardus has inaugurated the discussion.

† *Geschichte der Quellen und Literatur des Canonischen Rechts von Gratian bis auf Papst Gregor IX.* Stuttgart. Verlag von Ferdinand Enke. 1875.



as it may be gathered<sup>1</sup> from English records of which the credit cannot be impeached. For instance, the Professor holds that the *Ordo Judiciarius* was not written before 1201, and the *Distinctiones super Decreto* not before 1208 or 1210, and he grounds this opinion on the assumption that Ricardus has in one or two instances quoted Decretals which are recorded in Compilations, which were not in existence before the earliest of those dates, but as there were earlier sources to which Ricardus may have had access for this information, this argument is not conclusive, more especially as Ricardus does not cite any Compilation of Decretal Letters by number or by name, whilst there are good reasons for believing, as already stated, that he had access to the Decretals of Pope Alexander III. as collected in the Appendix to the Proceedings of the Lateran Council of 1179. Further we cannot admit that Professor von Schulte is warranted in assigning so late a date to the *Distinctiones super Decreto* as 1208 or 1210, for there is reliable evidence that Ricardus was elected to the Deanery of Sarum in England soon after it had become vacant in 1198 upon the consecration of Eustace, Dean of Sarum, to the Bishopric of Ely, which event took place on the 8th of May in that year.\* From documents entered in the *Registrum Rubrum* and in the *Liber Evidentiarius* of the Dean and Chapter of Sarum we may conclude with reasonable certainty that Ricardus, as Dean of Sarum, took part in an Act of the Dean and Chapter of Sarum on 4th July, 1199. From documents entered in the same Red Register and likewise in the *Liber Evidentiarius* it would appear that Dean Richard took part in two similar Acts in the year 1200, and for a third time

\* Ralph de Diceto, Dean of St. Paul's, is our authority for this statement; Rolls Series, Vol. II, p. 159. Bishop Eustace, who, as Dean of Sarum, had acted as the King's Vice-Chancellor, now became King Richard's Chancellor.

in a similar Act of the Chapter in the year 1201, and for a fourth time in a similar Act of the Chapter on 9th July, 1202. It is possible that Ricardus may have paid visits to Bologna after his election to the Deanery of Sarum, but that he should have resumed his residence at Bologna after that event and continued his labours on his *Ordo Judiciarius* with the assistance of two chamber-fellows is not a reasonable supposition. Besides, we have the Declaration of Tancredus that Ricardus anticipated Pillius, whereas the work of Pillius speaks for itself. It is not a treatise of any great length, and it is divided into three parts, whilst it appears from a passage in the second part that Pillius was then engaged in considering how to deal with a ruling of Pope Celestine III. shortly after that Pontiff's death, which took place on 8th January, 1198. Further, he speaks of that Pontiff as of one recently deceased, and he makes no mention in his work of his successor, Pope Innocent III., probably the greatest of all the Pontiffs, and the most learned in Ecclesiastical Law, who occupied the Chair of St. Peter until 17th July, 1216.

The following circumstance seems to have influenced the judgment of Professor von Schulte in extending the duration of the Scholastic career of Ricardus to the year 1210, to wit, that the name of Ricardus, Dean of Sarum, occurs in certain entries in the Pontifical Register,\* under the years 1205 and 1206. The first entry (No. 2646) is of the date 31st December, 1205, and contains a declaration that the election of Ricardus was invalid through some defect. The second entry (No. 2659) is a Dispensation granted by Pope Innocent III. on 14th January, 1206, to Ricardus as Dean of Sarum, "*ob defectum natalium*." There is no record in the *Liber Ruber* or in the *Liber Evidentiarius* of

\* *Regesta Pontificum Romanorum ab anno post Christum natum MCXCVIII. ad annum MCCCIV. edidit* AUG. POTTHAST. Berolini. 1873.

the Dean and Chapter of Sarum of any appeal on the part of the Chapter of Sarum against the election of Ricardus, and it is possible that the application to Rome may have been made by Ricardus himself *ex majori cautela*. However this may be, Professor von Schulte seems to have regarded these entries in the Pontifical Register as sufficient evidence that the election of Ricardus to the Deanery of Sarum took place in 1205, and assumes accordingly that he returned to England in that year.

- How Ricardus was engaged during the early years of the disastrous reign of King John is not very clear, but we find him promoted to the Bishopric of Chichester in 1214, when he commenced an Episcopal career strongly in contrast with his *cognomen* of Pauper. The Cathedral of Chichester, the Episcopal Palace, together with the houses of the Dean and Canons, and the City itself, had all been destroyed by a terrible fire on 20th October, 1187, so that the new Bishop succeeded to what may be termed a "*damnosa hæreditas*" in the year in which the Papal interdict against King John was relaxed. He seems to have maintained his fidelity to the King during the trying period of his reign which succeeded the day of Runnymede, and he was one of the executors named in King John's will. Further, on the accession of King Henry III., he appears to have sworn fealty at once to the Boy-King, as the name of R. Cicestrensis appears amongst the Prelates and Barons who were not committed to the French party, and who were present at the first re-issue of the Great Charter by King Henry III. in 1216.

Ricardus remained only three years at Chichester, as upon the unexpected death of his elder brother, Bishop Herbert, in 1217, the Canons of Salisbury elected him as his brother's successor, having appreciated his worth when he was formerly their Dean. Here, indeed, he left his mark by dismantling the old Cathedral, which was

inconveniently situated within the precincts of the Royal Castle, and by building a new Cathedral in a more convenient locality, where a new city has grown up around it. A full account of the foundation of the new Cathedral, A.D. 1224, when King Henry III. laid the first stone with great solemnity, is recorded in the *Liber Niger* of the Corporation of the present city of Salisbury, of which an extract has been printed in the *Sarum Charters*, Rolls Series, p. 269. The Bishop had previously drawn up, in the year 1223, a new body of Constitutions for the government of the Canons, which are printed in Wilkins' *Concilia*, Vol. I., p. 572, and likewise in the volume of the *Sarum Charters* above-mentioned.

Under what circumstances Ricardus was induced to resign the See of Salisbury before the new Cathedral was completed does not appear, but he provided an annual sum towards its completion at the time when he was translated to the See of Durham. It is possible that he may have been induced to accept the charge of the important Bishopric of Durham in consequence of the state of confusion and indebtedness in which the See had been left by the previous Bishop, Richard de Marisco, who had embarrassed it with a debt of 40,000 marks, and with a legacy of ill-feeling resulting from a bitter quarrel between himself and the monks. On the other hand, it is highly probable that Ricardus undertook the onerous charge of this very important See at the request of the King himself, as the King had refused to allow the monks to elect a member of their own body as successor to Richard de Marisco,\* and he was anxious that the See should be filled by a bishop, of whose fidelity to himself

\* King Henry III. had in the month of January, 1227, emancipated himself from the tutelage of Peter des Roches, and had declared in the following month of February, at the Council of Oxford, his intention to regulate the affairs of the Realm personally. He was supported by the Justiciar, Hubert de Burgh.

personally he had no doubt. However this may be, Ricardus Pauper, in spite of his *cognomen*, was approved by all parties, and by his skilful management relieved the See within a few years of its heavy debt. He seems to have possessed, like his ancestor, the great Bishop Roger of Salisbury, a genius for finance.

Ricardus may be said to have occupied the See of Durham during ten years with signal advantage to the diocese, but we must refrain from entering on so large a subject as the details of his wise administration of his diocese and his beneficent career in the North of England. We may mention, however, that the reminiscences of his scholastic life at Bologna most probably influenced the counsel which he gave to William, the Archdeacon of Durham, who, after the Bishop's death, made a provision for establishing a Hall within the Royal Borough of Oxford for the residence of ten or twelve Masters of Arts. That Hall was destined to become the *nucleus* of the Collegiate system at Oxford, and was known in after-time as the Great Hall of the University, and in the present day is known as University College.\* The Bishop's last act of Public duty appears to have been his attendance at the Common Council of the Realm, summoned by King Henry III. to meet at Westminster on 13th January, 1237, in which Council the Grant to the King of a thirtieth of their moveables was made by the Archbishops, Bishops, and Clergy, subject to a careful scheme for the assessment and collection of the Grant, in return for which the King confirmed all the Charters which he had signed during his

\* William, Archdeacon of Durham and Rector of Wearmouth, had been elected to the Archbishopric of Rouen, and having journeyed to Rome to obtain the confirmation of his election by Pope Gregory IX., in which he succeeded, had arrived at Rouen on his return journey, where he was taken ill and died; so that little is known of him at Oxford, except the fact of his endowment for ten or twelve resident Masters of Arts.

minority. Professor Stubbs, now Lord Bishop of Oxford, considers the scheme of assessment and collection devised on this occasion to afford a valuable illustration of the growth of Constitutional life in England, and I may add that the tendency of all the Public acts, in which Bishop Richard took part, was to further the growth of that life. But the end of his useful career was near at hand. He retired to the hamlet of Tarente [Tarrant] in Dorsetshire, which was in his ancient Diocese of Sarum, and where he had prepared for himself, in advance, a place of sepulture, and died there on 15th April, 1237, according to Matthew Paris, who describes him in his *Chronica Majora* as *Vir eximie sanctitatis et profunda scientiæ*, and commemorates him in his *Historia Anglorum* for having strenuously ruled three Episcopal Churches in succession, to wit, Chichester, Salisbury, and Durham. He did not, however, die without leaving behind him a record of himself in the language of his own countrymen, for he is reputed to have been born in the district now known as Tarrant-Crawford, which is contiguous to the parish of Tarrant-Kaines, of which latter parish he had acquired both the patronage and the parsonage in the year 1225, whilst he was Bishop of Salisbury, by a grant from the Priory of Merton.

There is preserved in the British Museum amongst the volumes in the Cotton Collection, a Manuscript in a hand of the early thirteenth century, which is distinguished in the Catalogue as Titus D. XVIII. This manuscript contains a treatise composed in the Midland Dialect of the English Speech of that period, of which it is a rare and very precious example, and it has been edited for the Camden Society, in 1853, accompanied by a translation into the English language of the present day by Rev. James Morton, as No. 57 of the Society's Series. Further, the handwriting has been thought worthy of taking rank amongst

the photographic facsimiles recently published by the Palæographical Society, in whose second series, Part IV., four columns of the text have been awarded a place as No. 75, under the editorship of Dr. E. A. Bond and Dr. E. Maunde Thompson, the late and the present Principal Librarians of the British Museum. It is described in the latter work as "*The Ancren Riwele*," written for the instruction of three ladies, anchoresses or nuns of Tarente or Tarrant-Kaines, in Dorsetshire, followed by homilies, &c., in the same hand, and bound up with other later pieces. There is no doubt as to the authorship of this treatise, and we have contemporary evidence in the Deed of 1232, already mentioned, of which a copy is preserved in the Archives of the Dean and Chapter of Salisbury, that there was in the early thirteenth century a Nunnery at Tarrant, with which Bishop Richard was connected by the obligation of supplying the nuns with adequate provision from the fruits of the Church of Tarrant-Kaines,\* and this circumstance will account for the interest which the Bishop took in the welfare of the nuns. It was for their edification that he composed the *Ancren Riwele*, which after his death became a Standard Book of Rules for the ladies of other Nunneries. Of this fact an apt illustration is forthcoming in the same Cotton Collection (Cleopatra C. VI.). A note in this MS., in a later hand of the thirteenth century, informs us that it was a gift to Legh Abbey, Devonshire, from Matilda de Clare, Countess of Hereford and of Gloucester, by whom Legh Abbey, originally founded for Austin Canons, had been converted into a Nunnery. This note speaks only of the Abbey to which a copy of the *Ancren Riwele* was presented by the Countess, but at that time the Nunnery of Tarrant had become, under the fostering hand of Queen Eleanor, to whose protection and

\* *Sarum Charters*, Rolls Series, p. 169, s.a. 1225.

governance Bishop Richard had commended it before his death, the Abbey of Tarente, or Tarrant Abbey, which had in course of time other Abbeys subordinate to it. I do not, however, propose, to pursue the fortunes of Tarrant Abbey beyond recording the fact that the Abbey and its Chapel have disappeared, whilst a Norman Church, which is supposed to have been outside the Abbey, is held to mark the locality, near which the remains of the Chapel, which Ricardus refounded, are to be looked for.

I have been informed by a learned antiquary of Tarrant-Kaines that two stone coffins, resting on the ancient pavement of a building, and covered by the ruins of a wall and other fragments of a building which had fallen over them and overwhelmed them, were found about forty years ago in the field which adjoins the Norman church, and which separates it from a large Abbey Barn. The upper slab of the smaller of those two coffins was supposed to have formed part of the coffin of Queen Joan, the daughter of King John of England and the wife of Alexander II., King of Scots, and it has been transferred to the Church, but the upper slab of the larger coffin, which was supposed to be the coffin of Bishop Richard Poore, still lies on the grass field, and there is nothing to suggest a "*siste viator*" to those who cross the field on foot, that they may mark well their steps, and tread lightly on the grave of the wise and good Bishop. Yet it is in this same Bishop Richard that we recognise in his youthful days the Englishman, Ricardus Anglicus, who had the high repute in the Law School of Bologna in the twelfth century of having led the way as a skilful pioneer in the scientific study of Judicial Procedure. And his recently discovered treatise supplies evidence to his countrymen of the present day, that the development of Scientific Jurisprudence in England before the days of Bracton was not the exclusive work of Anglo-Norman Jurists, but was a work in which a leading part was taken



by Ricardus Anglicus, the English *Magister Decretorum* of Bologna, who died Bishop of Durham, and was laid to rest in a now almost forgotten grave at Tarrant-Kaines, in his ancient Diocese of Sarum.

TRAVERS TWISS.

## II.—BRITISH FINANCIAL ADMINISTRATION IN INDIA: THE CAUSE AND PROBABLE RESULTS OF OUR DIFFICULTIES.

### I.—THE FINANCIAL ADMINISTRATION SINCE 1860.

WHEN a State enjoying a long period of peace begins to borrow money for discharging interest on previous loans, the action is generally interpreted as a premonitory sign of financial decadence, seeing that it reveals the inability of the Government to obtain the requisite funds from the ordinary sources of revenue, and leads to the conclusion that the financial reserves of that State are exhausted, save its power to borrow. That India has for some years past stood in this predicament there seems little reason to doubt when a review is taken of her financial administration during the last thirty-four years—that is, since her Government and her Legislature have been under the undivided control of a member of the British Cabinet. From such a review it will be seen that, shortly after the inauguration of the present *régime*, “an accumulated deficit of six millions occurred in three years; the permanent debt during the same period was increased by six and a-half millions; the serious and unprecedented course of increasing the burdens of the people in the middle of the year, had to be taken; the public works were in a great measure suspended; the income tax and the salt tax

were increased; the period was one of great trouble to the Empire and of anxiety to the Government" (Lord Mayo's *Budget Speech*, March, 1870). A few months later, and shortly before that much respected nobleman fell by the hand of a political assassin, he stated in a despatch to the Home Government:—"A feeling of discontent and dissatisfaction exists among every class on account of the increase of taxation that has for some years been going on; and the continuance of that feeling is a political danger the magnitude of which can hardly be over-estimated."

Lord Mayo was certainly no alarmist; his representations, therefore, led at once to the appointment of a Select Committee of the House of Commons to inquire into the finances of India; and although the proceedings of that Committee were unduly protracted by the unwillingness of the Government to furnish the necessary accounts and information, and were eventually interrupted by a dissolution of Parliament, a mass of valuable evidence was collected, disclosing a laxity in the administration and a reckless waste of public money, which would scarcely have been credible without such authentic and irrefragable evidence, and which certainly would not have been possible, but for the irresponsible system of government imposed on India. Millions and millions had, within a few years, been spent in ill-conceived and ill-constructed public works—the Godavery navigation scheme, the Orissa project, the Mutlah railway, the Madras Irrigation works, and numerous other unsound enterprises—with the result that the interest on the millions borrowed for the purpose became a permanent burden on the people of India, without any countervailing advantage whatever accruing to the country. The following short extract from the evidence given before the Indian Finance Committee by the officer specially deputed by the Government to defend its action

in the Department of Public Works, will give an idea of the way in which public money was expended :—

“ June, 1872. Question 6535.—You said that the Public Works Department had not a concrete existence. Is it an abstraction that can get money? Answer: I meant that they had not a concrete existence in the sense of controlling the expenditure.

“ 6536.—Then who controls it? The Government as a whole controls it. There is no person specially responsible to the public and to the Government for the operations of that Department.

“ 6537.—Now, we get it clear: this enormous expenditure is going on; it has gone on; it is going on this year to the extent of something like £40,000,000. You have recommended an expenditure of £70,000,000 in future public works, forty millions in canals, and thirty millions in railways, and yet you admit that there is no one in the slightest degree responsible for the manner in which that expenditure is carried out, no one on whom a Committee, for instance, could fasten the responsibility? I entirely admit that, as regards the general control of those great financial operations, there is no person who has that responsibility put on him, that should be.”

From the whole of the evidence given before the Indian Finance Committee, it was clearly seen that bankruptcy could be averted only by a complete reform in the financial administration, and the exercise of strict economy in the future; and this task was taken up with admirable zeal and ability by the Viceroy who succeeded Lord Mayo. But as soon as confidence began to be restored, new speculative schemes, involving very heavy expenditure, were started by the Indian Secretary of State, and, from 1876 to 1880, India paid her way by extensive borrowings. In 1885, while no danger of war threatened the country, the expenditure was suddenly increased again by upwards of

three millions, chiefly in connection with the Army, and the increase became larger and larger in subsequent years, the operations requiring the money being the annexation of Upper Burmah and the subjugation of the Tribal territories lying along the North-Western frontier of India.

Burmah, it was confidently asserted, by the Government, could be conquered in a few months, and would, when annexed to our Indian Empire, soon add materially to its financial resources. As a matter of fact, nearly twenty millions have been taken from the Indian treasury to enable us partially to hold our conquest in Burmah; and the pacification of the country seems more remote now than it appeared to Lord Dufferin when he left India.

Then, as regards the conquest of the mountainous regions which divide our Indian territories from the advanced position taken up by Russia, it has been alleged that the subjugation of the intervening tribes is absolutely necessary for the protection of our Empire against a Russian attack. The Foreign Office, it has been hinted, possesses alarming information on Russian schemes for the invasion of India; and the Will of Peter the Great is referred to in justification of the alarm. The Will, it is true, says:—"Hasten  
"the decline of Persia, penetrate to the Persian Gulf and  
"make your way to the Indies—they are the Emporium  
"of the world." But the Will required the previous subjugation of Continental Europe, and gave as a reason for considering the plan practicable, that "the European  
"nations had mostly reached a state of old age bordering  
"upon imbecility, or were rapidly approaching it, and that  
"they would then be easily conquered by a people strong  
"in youth and vigour. Approach Constantinople. He  
"who shall reign there will be the sovereign of the world."

Now, the fact is that the European nations, far from having fallen into the anticipated state of senility and decay, are full of vigour and enterprise, while Russia, during

the last hundred and fifty years, has not been able to take the first step in her projected march of conquest, which was to lead to the Indies. It seems, therefore, unaccountable that the rulers of a great and powerful nation like England should be led, by the fear of a Russian advance through the most difficult country in the world, to embark on an arduous and problematic task, at a great risk of failure, and with the certainty of creating serious discontent, if not actual disaffection, among the two hundred millions of her Indian subjects who are being compelled, by oppressive taxation, to defray the cost of these doubtful and unsuccessful ventures. The astonishment becomes still greater, when it is remembered that our most eminent military authorities have all along declared that a Russian attack from Central Asia could most effectually be defeated upon the Indian frontier within reach of our reserves and material resources, and that it would be excessively unwise to advance and encounter the foe in the intermediate difficult and inhospitable region. Lord Roberts, at the termination of the last Afghan war, expressed himself thus on the subject:—"Should Russia in future years attempt to "conquer Afghanistan or invade India through it, we should "have a better chance of attaching the Afghans to our "interests, if we avoid all interference with them in the "meantime. The longer and more difficult the line of "communication is, the more numerous and greater the "obstacles which Russia would have to overcome; and so "far from shortening a mile of the road, I would let the "web of difficulties extend to the very mouth of the Khyber." This opinion, thus clearly defined, has since been neither retracted nor in any way qualified. Besides, the failure, during the last eighteen years, of all our attempts to subjugate even the border tribes of Afghanistan, ought long since to have convinced us that the task was impracticable, and that the money we spent, year after

year, in its prosecution, only aggravated the financial burden which our previous failures inflicted on the people of India.

An idea has prevailed with the Government that bribes would effect what our arms failed to accomplish, and money has accordingly been lavished on tribal Chiefs on condition of their acknowledging our supremacy. Such acknowledgments have been purchased from a number of Sirdars; but their tribesmen, disregarding the bargain, have all along resented our presence by attacking our convoys and detached parties, and burning our military posts, especially in the Zhob valley and in Waziristan, where we have for some years been planning the construction of a railway to Pishin, in order to secure our communications with Quetta, the line through Sind being frequently interrupted by floods and landslips. The recent Mission to Kabul and the large increase made in our subsidy to the Amir, were said to have induced him effectually to discourage the hostile behaviour of the Waziris, and to have thereby secured the safety of our military road through the Gomul pass. This expectation, however, has been frustrated, as will be seen from the following statement published in the *Pioneer* of the 25th February last:—"The Waziris are bent on mischief. In addition to attacking a patrol in the Bitani country, they have given trouble at the Western entrance of the Gomul pass. Captain Rattray, of the 22nd Punjab Infantry, was proceeding to Tank when the guard in charge of his baggage was attacked eight miles east of Kajuri Kach. A Lance Naib and three sepoy were killed, and their rifles carried off."

A similar state of things prevails in the lower part of the Kuram valley where we are also endeavouring to exercise authority and to establish a military post near Malana. Some Turi headmen have consented to receive British pay

and to induce a few hundred of their followers to enlist in a sort of militia corps. The Afghan tribes of the country, however, repudiate our pretensions, and have taken up arms in defence of their independence. Sarwar Khan, their leader, had in March last an interview with the Lieutenant-Governor of the Punjab, the particulars of which have not been made known; but the statement published in the *Englishman*, of the 28th March, that "Since our agreement with the Amir he will doubtless receive no encouragement from Kabul," would shew that the Chieftain and his followers remain hostile to our presence in the tribal territory.

These events are significant in their bearing on the finances of India; they show that the long series of trans-frontier expeditions, which caused so heavy a drain on the Indian Exchequer, must now be renewed, if the Waziris and other tribes, whom we have, for eighteen years, been endeavouring to subjugate, are to be brought under British control.

A review of the financial administration of India since 1860, shews :—

1st. That, within a few years, a severe crisis occurred, which was due, according to the evidence collected by the Indian Finance Committee, to great extravagance on the part of the Government, and to the neglect of all sound principles of State economy;

2nd. That in 1876, when the depreciation of the metal in which the Indian revenue is collected, became alarmingly threatening for the future, preparations were, nevertheless, commenced the same year for an unprovoked war, with the avowed object of acquiring a "Scientific British Frontier," in the heart of Afghanistan; and

3rd. That the heavy expenditure subsequently incurred in unprovoked military operations beyond the frontiers of India, has so deranged the finances of that country that

loans have now to be raised for paying the interest of the Public Debt.

## II.—THE PROXIMATE CAUSES OF THE PRESENT SITUATION.

It is in the inordinate expenditure on military schemes, entered upon since 1876, that our present difficulties have originated; and until such expenditure is effectually arrested, and the finances of India are administered upon rational and acknowledged principles of economy, the task of replenishing the Indian Treasury must continue to be as hopeless a task as that of filling a bottomless cask with water.

The Government contend that the depreciation of silver is the only cause of their present difficulties; but this contention is inadmissible so long as the extravagance and neglect of principles, which brought on the crises of 1870, 1878, 1882, and 1888, are the leading features of their administration. Besides, Government have not been the only sufferers in the silver question; all who derive their incomes from Rupee Paper, from Indian salaries, or from industries or professions exercised in India, and have to use their incomes partly in Europe, are sufferers from the same cause; and if these persons have avoided bankruptcy, it is because they took timely precaution against the peril, by reducing their expenditure and submitting to retrenchment and economy, which doubtless pressed heavily, and even cruelly, upon individuals and families, but which common prudence and honesty inexorably enjoined.

The depreciation of silver, like the depreciation of other property caused by an excessive supply, creates a situation which is regulated by a natural law governing rulers and subjects alike; and the history of our own times has repeatedly shewn how vain it is for an extravagant Government to seek shelter from financial disaster in oppressive taxation and loans. Eighteen years ago, the Indian



Finance Minister warned the Government, in the following impressive terms, of the urgent necessity of preparing to meet the difficulties which have now assumed such alarming proportions:—"From whatever point of view the depreciation of silver is considered, it is the gravest danger that has threatened the finances of India. War and famine have often inflicted losses, but such calamities pass away. The losses are known and limited. This is not the case with the present cause of anxiety. Its immediate effects are serious enough; but that which adds significance to it is that the end cannot be seen, and the future is involved in uncertainty." (*Budget Statement*, 1876.) Not only was this warning of the need for reform and economy contemptuously cast aside by the Government, but the stupendous project of conquering Afghanistan was launched the very same year, a project which, had it been realised, would have intensified and perpetuated our financial difficulties, but which eventually resulted in most humiliating national disasters and an addition of twenty-five millions sterling to the public debt of India.

Notwithstanding this deplorable result, the fatal policy of advancing into Afghanistan was revived on the 6th August, 1885, when the Indian Secretary of State declared in Parliament that heavy additional expenditure was considered necessary in consequence of the advance of Russian troops in Central Asia. The Army expenditure during the previous four years had averaged Rs. 163,500,000; it was increased by Rs. 30,497,000 the next year, and has since been growing steadily, the sum spent in 1892-3, (the latest year for which the accounts have been published) being Rs. 230,007,791, including Rs. 4,530,000 spent on "Special Defence Works."

During our continuous financial difficulties in India, no earnest proposal has been suggested either in Parliament or by any Minister of the Crown, for comprehensive reform

or the creation of some Constitutional control over the finances of that country. And yet, it is obviously through such measures alone that financial security can be obtained and due protection be afforded to the millions of Englishmen and Englishwomen, at home and abroad, who derive their means of subsistence from Indian trade and industry, from Indian Securities and from salaried employment in India. This supine indifference both to English interests when unconnected with party politics, and to the solvency of the Indian Exchequer, is traceable directly to the vicious system of government imposed on India. When that system was being discussed in Parliament in 1858, the late Mr. John Stuart Mill emphatically warned us that an incalculable injury would be inflicted on India, unless an influence were brought into existence, which would constitute for the finances of that country a protection similar to that which it had derived from the East India Company; and the evidence given before the Indian Finance Committee soon shewed how prophetic that warning had been. Lord Lawrence, in his evidence before the Committee, said: "The Secretary of State is supreme in all financial questions; he is "a member of the Cabinet whose fortunes are scarcely "affected by any consideration likely to promote the "interests of India, but whose existence may at any "moment be terminated by a hostile vote of the commercial interest." Subsequently a member of the Committee (Prof. Fawcett) observed in Parliament, 6th August, 1872:—"The Secretary of State for India is simply a member of "the Cabinet, and what chance is there of the affairs of "India receiving adequate consideration, when the Cabinet "is perplexed by a host of questions which may affect the "fate of an administration? India may be neglected, her "money may be wasted, her affairs may be mismanaged, it "will not affect the interests of the party, it will scarcely "raise a ripple on the surface of politics."

The accuracy of these statements, which has never been questioned, is now strikingly confirmed, by the exemption just granted to Lancashire cotton goods, from the duty which is levied on all other goods on their entrance into India. This exemption, which necessitates additional taxation and loans to the extent of about Rs.15,000,000, is virtually a grant made from the revenues of India to the manufacturing classes in Lancashire, for the purpose of securing the votes of their representatives in Parliament—it might even not inaptly be charged as a misappropriation of public money. The Tariff Bill, involving the exemption, was passed by the standing official majority of the Indian Legislative Council on the 10th March last; and the following extracts from the speeches delivered by official members on that occasion, will shew how that Council, which was intended by Parliament to be a deliberative body charged with protecting the interests of India, has been converted by the Secretary of State, by his despatch of 24th November, 1870, into a mere office for giving the form of law to his autocratic determinations. Hon. Sir Charles Pritchard said:—"My own views regarding the exclusion of cotton goods from taxation under the Indian Tariff Bill, are closely allied to those of the hon. member who has moved the amendment. But I sit in this Council not as an independent member, but in virtue of the office I hold as a member of the Executive Council of the Governor-General. The Government of India is subject to the control of the Home Government. Her Majesty's Government has decided against the inclusion of cotton goods in the schedules of the Indian Tariff Bill. I must accept that decision and take my part in giving effect to it; I shall accordingly vote against the amendment." Lieut.-General Brackenbury said:—"I am personally of opinion that, in the present situation, it is desirable in the interests of India, that import duties should be imposed upon

“certain classes of cotton goods ; but I intend to vote  
 “against the amendment, as I cannot think that, as a  
 “member of the Executive Council, I should be justified  
 “in voting against the orders of her Majesty’s Government.”

The authority assumed by the Secretary of State to direct that the members of the Legislative Council in India should vote, not according to their conscience and convictions, but in obedience to his orders, is, I submit, both illegal and contrary to public morality. It may be remembered that in 1862, although oppressive taxation had been imposed in India in consequence of the expenditure and loss of revenue occasioned by the mutinies and rebellion of 1857-8, it was proposed to grant a large sum of money to Ghulam Mahomed, the son of Tipoo Sahib of Srirangapatam. The grant had been sanctioned by the Secretary of State under certain influences which were then prevailing at home. Sir Barnes Peacock, Chief Justice of Bengal, who was one of the additional members of the Legislative Council, having inquired on what grounds the grant was to be made, the Government members objected to the full particulars of the case being submitted for the consideration of the Council, and proposed that the matter should be referred to the Secretary of State for decision. Thereupon Sir Barnes Peacock observed that the Secretary of State had no *locus standi* in that Council, which was constituted by an Act of Parliament, and that its members had a right and were bound to “look into the expenditure of money raised under their sanction.

The Secretary of State then suddenly became of opinion that it was inexpedient that a Judge of the High Court should sit in that Council ; and the motion for the grant in question was accordingly adjourned until the period of Sir Barnes Peacock’s membership had expired. The other official members of the Legislative Council, who were salaried servants of the Government, were made to under-

stand the necessity of obeying its orders, irrespective of their legality and justice, and the standing majority of the Council is still composed of official members.

The speeches just cited from the records of the Council of the Viceroy, clearly lift the veil which ordinarily conceals from public view the internal machinery of the great and costly edifice by which India is governed. Outwardly, the edifice is most imposing—a Governor-General receiving the highest salary known in the British Empire, Governors, Lieutenant-Governors, and Chief Commissioners proportionately remunerated, Executive and Legislative Councils apparently in deep deliberation over the actions and laws best suited to promote the welfare of the country; but the drawing aside of the curtain exposes the meagreness and rough structure of the internal mechanism. The imposing personages viewed by the public are moved in their respective circles, not by the dictates of their reason and experience, but by electric wires worked from Downing Street by an individual to whose sole discretion the happiness of the Indian people and the expenditure of the revenue exacted from them, have been intrusted. This individual, who is selected, for no special qualification for the great trust reposed in him, but solely for the influence he exercises in party politics, is constrained, moreover, by irresistible surroundings, to satisfy in the first place the requirements of the Cabinet on which his official existence depends, and the claims of the British constituencies which support that Cabinet.

The present exemption of Lancashire cottons from import duty is only one instance of an evil which spreads in various directions. The valuable Indian patronage enjoyed by the British Cabinet enables it to reward its supporters in Parliament; and any reform which requires a diminution of that patronage is necessarily distasteful to the Government. Accordingly, for four-and-twenty years

the highest military authorities have declared that the maintenance of three armies and three Commanders-in-Chief, while it entails much useless expenditure, is positively injurious to the efficiency of our military force in India; and a question was simultaneously raised—if the Punjab, the North-Western Provinces, and Oude can be administered by Lieutenant-Governors and Commissioners, why should a more costly system be kept up in Bombay and Madras? Both the suggested reforms involved questions of patronage, and were persistently ignored by the Government for twenty years; the former has now been taken up, but the latter remains shelved.

In view of the supineness of the Government in the matter of reform, the member of the Indian Finance Committee, from whose speech a passage has already been quoted, said on the same occasion:—"But how are we to ensure that the finances of India will be managed in the future with greater care and economy?" The question was answered by himself in the following words:—"Every effort should be made to interest the English public in the affairs of India. I believe that the high price of Indian Securities is due to the fact that investors believe that England, if anything went wrong with the revenues of India, would be, if not legally, at least morally responsible for the money that had been lent on the security of the Indian revenue. Investors may have been deluded into that belief by an Act which this House unfortunately passed some years since, which allows trust money to be invested in Indian Securities. The investors are so numerous and so widely scattered, that if their interest in India were awakened by pecuniary considerations, this House would soon reflect the feeling, and the Government would then know that they could no longer remain passive spectators of acts of extravagance and mis-management, like those which have been described. An attempt has in vain been

“ made to get the Financial Department to publish a clear  
 “ account of the loans that were raised and how they were  
 “ expended.”

It might also be useful to remind investors of the following significant remarks which fell from the late Earl of Derby, in the House of Lords, on 3rd March, 1881, when it was suggested that the British Exchequer might, in case of need, come to the assistance of India for bearing the expense of Lord Beaconsfield's "Scientific Frontier" policy :—" It will be time enough to discuss that hypothesis "when it is shewn that English constituencies, chiefly " composed of working men and poor men, are willing to " increase their burden for any such purposes. I do not " believe that they would agree to it."

### III.—SOME PROMINENT FEATURES OF THE ACTUAL SITUATION.

While endeavouring to tide over their financial difficulties by taxation and loans, the Government have ventured on certain empirical remedies for counteracting the depreciation of silver, in its adverse effect on the sale of their Indian Treasury drafts. The Indian mints have been closed and a duty has been imposed on silver imported into India, in the expectation that these measures, which tend to reduce the supply and raise the value of silver in India, will produce a corresponding rise in the price of drafts payable in that country. It should be remembered, however, that the price of such drafts has hitherto been regulated, not by the value of silver in India, but by its price in London, and that the same condition must continue mainly to prevail, so long as the aim and the basis of the bargain in question remain unchanged. The aim of the Government in offering their drafts for sale, is to bring home that large portion of the Indian revenue which is annually spent in England.

In earlier times the conveyance was effected by the Rupees themselves, or their equivalent in bullion or merchandise, being shipped for sale in London; and later, when the Government were precluded from trading, bullion was still available for the desired remittance. Simultaneously with these requirements of the Government, merchants wanted funds sent to India for the purchase of Indian produce; and while a part of these wants was supplied by shipments of European goods to India, bullion was available for the remainder. Under these circumstances it suited both the Government and the merchants, that the Rupees, which the former desired to bring home, should be made over to the merchants on their paying the equivalent in Pounds Sterling to the Government in London. This transaction has, for years, been carried out by means of drafts on the Indian Treasuries, which the Government sold at such rates of exchange as gave them an amount in Pounds Sterling at least equal to the sum which the Rupees, if brought over and sold in London, were likely to produce. On the other hand, the merchants and all who desired to send funds to India, were willing to buy the Treasury drafts so long as they were obtainable at rates which would lay down fully as many Rupees in India as a shipment of silver purchased in London was likely to realise in that country—both parties taking into account the delay and expense attending bullion shipments. Thus it has been the price of silver in London, and not its value in India, that has ruled the rate of exchange in the sale and purchase of drafts payable in India.

The additional charge which the duty now imposes on silver shipments to India may induce remitters to pay a somewhat higher rate of exchange for drafts, but it must also, by restricting the export trade of that country, decrease the demands for drafts, and thereby affect the rate of exchange in the contrary direction.



Meanwhile, the experimental measures adopted cannot fail to cause incalculable mischief: 1stly, by obstructing an important outlet of the silver markets in Europe and America, and thereby tending to depress the price of silver in London; 2ndly, by curtailing the facilities for sending funds to India, and thereby hampering her Export trade on which her agriculture and the collection of the Land Revenue greatly depend; and 3rdly, by crippling, through a stoppage in the free supply of currency, her internal trade and industry which constitute important, though indirect, sources of her State revenue.

Other remedies also for the depreciation of silver have been discussed for the last twenty years. The introduction of a gold standard in the Indian currency, and the establishment of Bimetallism have been foremost among the measures advocated. The value or utility of the former must necessarily depend on the cost of carrying it into effect; and while no reliable estimate of such cost has been produced, an opinion has prevailed in well-informed quarters that the cost, under existing circumstances, would considerably exceed the advantage expected to accrue from the measure.

Then as regards Bimetallism, its advocates are numerous, and many of them influential statesmen; at the same time no practical means have been suggested, except an International Convention, for securing the primary condition of the scheme, namely, the maintenance of a fixed relative value between gold and silver. Lord Salisbury, who, as our Foreign Minister, took steps to ascertain whether such a Convention would receive, in its many details, the unanimous support needed for success, thought that the project was impracticable; and his successors in that office have not declared a contrary opinion. Under these circumstances, it is obvious that other and more immediately practicable means must be discovered if the imminent peril

of bankruptcy is to be averted. The Financial Statement of the Government, however, suggests no such means.

The Indian Budget for 1894-5 shows a deficit of Rupees 29,230,000, towards which it is proposed to raise Rupees 11,400,000 by new import duties, to appropriate Rupees 10,760,000 of the Famine Relief fund, and to retrench Rupees 4,050,000 from the contributions destined to the Provincial Governments, thus leaving Rupees 3,020,000 uncovered. This sum, added to the deficits of 1892-3 and 1893-4, amounting together to Rupees 26,260,000, constitutes an accumulated deficit of Rupees 29,280,000, which is to be provided for out of loans. During the debate on the 27th March in Calcutta, it was emphatically urged on behalf of the Government that the financial difficulties of the day were due entirely to the depreciation of silver, that is, to a cause beyond their control; and the measures proposed for dealing with those difficulties are described in the Financial Statement as "a programme of retrenchment and vigilance intended to tide over a period of transition." Now these opinions betray a deplorable misapprehension of the crisis; seeing that, if the present necessity of borrowing for ordinary expenditure is to be ascribed to the depreciation of silver, the crisis cannot fairly be described as "a period of transition," when the probabilities of the future (in view of the large quantity of silver stored in America, which may any day come on the market) point to an indefinitely prolonged period of depression in the value of that metal.

Then to say that the programme of the Government is one of retrenchment is likewise misleading. It is true that the contributions to the Provincial Governments are to be reduced by Rupees 4,050,000; but the full meaning of the operation will be understood, when it is remembered that, under the existing arrangement in India, the Provincial Governments receive from the Imperial Treasury certain allotments which are avowedly insufficient for their wants,

but which they are authorised and ordered to supplement by taxation imposed within their respective territories. The so-called retrenchment of Rupees 4,050,000 therefore is in reality the imposition of Provincial and local taxes, which are not to appear in the Imperial Budget.

There is also to be a retrenchment or reduction in the allotment for public works, from Rupees 5,000,000 to Rupees 3,500,000, the works to be suspended being the Cawnpore extension of the Lower Ganges Canal, and the Lucknow-Rae-Bareilly railway to Benares. Works of this nature, when interrupted in their construction, are liable in India to serious injury from floods which annually recur; and the following remarks of the late Professor Fawcett demonstrate the injury which results from such interruptions:—"It is impossible to ascertain from the figures in the Budget to what extent a surplus is due to the sudden cessation of expenditure in public works which have already been commenced, and which on the one hand cannot be abandoned without wasting the money already expended, and cannot on the other hand be suspended without adding greatly to their ultimate cost. No circumstance has more powerfully promoted waste and extravagance than the impulsiveness with which public works have been undertaken, and the suddenness with which their construction has been suspended." (*Indian Budget Debate*, 6th August, 1872.)

If we now turn to the subject of the Revenue, we find that a marked improvement is alleged to have taken place in the land revenue of 1893-4—a statement which, taken by itself, would indicate a prosperous state of agriculture and a healthy condition of that most important branch of State income. But a much less favourable conclusion is arrived at as soon as the modes by which the increased income was realised are inquired into. In Assam, where the assessments had just been greatly enhanced, a military force had to be

employed, and people were shot down before the collections could be proceeded with. In other provinces, the attachment and sale of estates and farms were resorted to with extreme severity. In Bengal, where the land tax is generally less oppressive than in other parts of India, 17,000 estates, or shares of estates, were attached for default of revenue, and the Government purchased at their revenue sales forty-three of the estates so attached for the absurdly small sum of 54 Rupees (see *Bengal Administration Report*, 1893). In the Ryotwari districts of Madras, the collection processes were marked by still greater oppression.

While these harsh and suicidal methods of realising excessive assessments may bring some temporary relief to an exhausted Treasury, they result in the destruction of much agricultural capital and in the impoverishment of the cultivators, and cannot therefore fail to inflict very serious injury on the most important source of the Indian revenue.

Moreover, the alleged improvement in the land revenue of 1893-94 may turn out to be an error, seeing that the figures in an Indian Budget have sometimes been placed under incorrect headings, and thereby led to misleading conclusions. For instance, the Indian Finance Committee discovered, after a good deal of cross-examination, that a sum of £427,000, which appeared under the head of land revenue, was actually the accumulated proceeds of waste lands sold in previous years, and which, under the law authorising the sale, should have been employed in the reduction of the public debt. "So anxious was the Government to manufacture a surplus that the law and every consideration that should influence prudent financiers or careful Statesmen, were cast to the winds. Many as have been the strange disclosures made by the Indian Finance Committee, nothing perhaps throws a more instructive light on the way in which our Indian affairs are managed,

"than the confession made by official after official of such appropriation of capital to income."—(Professor Fawcett's Speech, *Indian Budget Debate*, 1873.)

The same mistrust of Indian Budgets has been reflected in the *Times*, a leading article in which paper (November 11th, 1872), said:— "Notwithstanding the determined and ingenious defence made by the Department in London whenever adverse criticism is heard in the House of Commons, we cannot bring ourselves to feel confidence in the Budgets of our successive Ministers at Calcutta. We will go further and say that men not at all given to timidity look upon the financial position of India with anxiety; and although fully admitting the wealth of the country and its capacity to yield large yearly sums to Government, they believe that taxation is not only becoming inordinately heavy, but that it is not imposed according to the wisest methods. We are straining ourselves in a time of peace, and no further resource has been suggested by our Statesmen beyond a tax [the income tax] which even when kept down to an insignificant amount, has proved a cause of irritation and misgiving throughout the country."

#### IV.—THE FINANCIAL PROSPECT IN INDIA.

In a forecast of the proximate future, mere possibilities, such as an extraordinary increase or decrease in the world's supply of either gold or silver, must, for obvious reasons, be left out of account, and probabilities alone be considered. Famine, and wars undertaken for Territorial aggrandisement or the extension of political influence, have, during the last thirty-four years, greatly added to the annual expenditure and the permanent debt of the Indian Government, and the recurrence of similar calamities under present conditions, would most probably prove fatal to the financial integrity of the State. On the other hand, a cycle

of favourable seasons and a wise and economic administration of the finances, with the maintenance of peace, might in a few years restore equilibrium between the income and the expenditure of the Indian Government. It is important, therefore, to inquire whether a change of policy so urgently needed, may be brought about in the present critical state of things—a change from the reckless extravagance of the last thirty-four years, to a policy of prudence and economy.

Experience, in a misguided career, has sometimes, through the punishment which recoils on the guilty, induced amelioration and reform; but no such wholesome effect can be looked for in the present case, seeing that those who have mismanaged the affairs of India, have now, in their own persons, suffered from their misdeeds. Accordingly, no reform followed previous crises, and it would be idle to look for a contrary result from the present crisis, when the pernicious influences under which India is governed remain as powerful as they were thirty-four years ago. And yet the situation is more perilous now than it was on any of the occasions referred to. Our reserves are exhausted, and the appalling barrenness of our present resources is forcibly brought to light in the following remarks made by the Finance member of the Legislative Council on the 1st March last, when he introduced the Indian Tariff Bill:—"Six years ago in this Council, I showed that within about four years we had been called to enhance our expenditure by nearly 12,000,000 Rupees in consequence of the increase of the Army and of military measures adopted on the North-West frontier, nearly 18,000,000 Rupees in consequence of the annexation of Upper Burmah, and nearly 18,000,000 Rupees in consequence of the increase of exchange charges. These increases of expenditure we had met by the imposition of Income Tax, by the absorption of the Famine grant, and

“by the curtailment of the sums assigned to provincial purposes. We found ourselves then at the end of our existing resources. We came before the Council, therefore, to justify an increase in the Salt duty, and to ask for further power of taxation, namely, in respect of petroleum. I then laid before the Council a short review of current finance, in which I addressed myself in part to the question of the extent to which we had permitted increased expenditure in matters within our control. To-day I come before the Council with a much more serious proposal, but based upon the same grounds.”

The destitution of the Indian Exchequer is made still more apparent in the Financial Statement of the Government, where it is stated, at paragraph 50 :—“The means we have adopted in the Budget Estimates of nearly balancing the Revenue and Expenditure are means which will hardly be available a second time. It is at some risk that we suspend even for one year the provision which we shall certainly require if a famine season comes upon us. The 40 lakhs also which we obtain from the Provincial Governments exhausts for the time that source of relief from temporary difficulties.”

The saddest feature in the case is that the Government, while fully conscious of the gravity of the situation, takes no step towards ensuring safety in the future ; but looks to the rehabilitation of the Indian currency alone for relief, and leaves to their successors the task of providing for the difficulties which they themselves are aggravating by the neglect of economic reforms, and by additions to the public debt. They say :—“We have just entered upon the currency crisis, upon the settlement of which depends our future. Whether we shall be able to establish our Rupee at what we may call a favourable figure, is a question the solution of which must practically be left to experiment. Time has not yet declared whether our

“financial position is going to improve or going to deteriorate. It is a serious confession to make, but it is nevertheless true, that we can do little more than watch in what direction the forces are working which will in the end bring us either security or more serious troubles than any we have yet had to provide against.” (Supplement to the *Gazette of India*, 24th March, 1894, p. 364.)

This lamentable supineness and the incessant efforts of the Indian Government to curtail the Jurisdiction of the High Courts because it interferes with the illegal processes by which the State income is acquired, remind us of what Louis XV. said to a confidant regarding difficulties which he decided on leaving his successor to contend with. “Those long robes,” said Louis, alluding to the members of the Judiciary, “would like to tutor me. The Regent was much to blame for giving them the right to make remonstrances ; they will end by ruining the State ; they are an assembly of Republicans. Things, however, will last as long as I do.” Similarly, the Indian Secretary of State appears, from the above extracts, to have decided on leaving his successor in office to deal with the mischief which he is himself instrumental in perpetuating.

An article in the *Law Magazine and Review* for August, 1893, has shewn how similar is the present state of things in India, to that which prevailed in France, as described by Baron Ferdinand de Rothschild in his paper in the *Nineteenth Century*, entitled “The financial causes of the French Revolution.” A perusal of the article in this *Review* will greatly assist the reader in apprehending the actual position of affairs in India. One of the most wide-spread and sanguinary revolutions recorded in the annals of the world sprang from the despotism and extravagance of the rulers of France ; and although its advent was clearly foreseen by bystanders, it took the Government entirely by surprise. Looking at the



remarkable similarity in the premises, it would be irrational to believe that the same causes will not produce the same effects, and that no amount of oppression and injustice will rouse the Indian populations to rebellion.

J. DACOSTA.

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### III.—THE LATE HON. DAVID DUDLEY FIELD AND THE LATE M. AUGUSTE COUVREUR.

THE Association for the Reform and Codification of the Law of Nations has lately sustained almost simultaneously two severe losses from the singularly thinned ranks of the members of the Foundation Conference at Brussels in October, 1873.

David Dudley Field, one of the Founders, and a past President of the Association, died very suddenly from the effects of pneumonia, within a couple of days of his return from a visit to Europe, at his residence in New York, early in the morning of Thursday, 12th April, at the ripe age of eighty-nine, as we learn from the *Chicago Legal News* for 14th April, 1894.

Auguste Couvreur, one of the Founders of the Association, died, at the relatively early age of sixty-six, in the morning of Monday, 23rd April, but eleven days after Mr. Field, at his recently built residence, 254, Chaussée de Vleurgat, Brussels, after only a couple of days of acute suffering from a cancerous affection which had been discovered some months before, but which had not been expected to take a critical turn so soon. Remembering both these men, as we do, taking part in that most interesting Foundation Conference in the Town Hall of Brussels, under the presidency of Auguste Visschers, and with such world-famed fellow-workers as Mancini,

Passy, De Laveleye, Bluntschli, Bernard, Twiss, and others, of whom, as far as we can remember, Sir Travers Twiss and the present writer are almost, if not quite, the sole survivors among the British members, we cannot but feel a personal sense of loss, additional to that which will be felt by the Republic of Letters, in the removal from among us of so able a Jurist and so earnest a Law Reformer as David Dudley Field, and so distinguished an Economist and so zealous a Philanthropist as Auguste Couvreur.

David Dudley Field was, as the *Chicago Legal News* tells • us, the eldest of four sons, all men of mark in their after life, of a New England pastor, at Haddam, Conn., where he was born, 13th February, 1805. Of his other sons, one, Cyrus, as our Chicago contemporary says, made himself a name that was familiar in all civilised countries as the projector and builder of the first cable connecting Europe with America. Of the others, one, Stephen J. Field, is an Associate Justice of the Supreme Court of the United States, distinguished, so we read in the *Herald of Peace*, 1st May, 1894, citing *Harper's Weekly*, by his aristocratic look, and old-fashioned courtliness of manner, while another, Rev. Dr. Henry Martyn Field, is a leading Editor in the Religious literary world of America. David was an *alumnus* of Williams College, where he graduated in 1825, his Legal education being carried out at Albany and New York. He was called to the Bar in 1828, and so soon did he enter upon his life work as a Law Reformer that it was "early in the 30's," as the *Chicago Legal News* records, that he "began an agitation for the simplification of the rules of practice." This "agitation" as a Law Reformer he never gave up, his very last literary contribution to the subject being a Paper for the Law Reform Congress during the Chicago World's Fair, which one of those who heard it read told us he considered one of the ablest that had ever been penned by its distinguished author.

We had the pleasure of numbering David Dudley Field among the valued American contributors to this *Review*, and his latest Article printed by us happened to be on a subject eminently characteristic of the writer, viz., the *Amelioration of the Laws of War*, which will be found in our No. CCLXVII., for February, 1888.

In bygone days, David Dudley Field's presence was familiar to us in England at the Congresses of the Social Science Association, no less than at the Conferences, whether in England or on the Continent, of that Association for the Reform and Codification of the Law of Nations which he had so largely helped to found. Our own invitation to the Foundation Conference of the Association, included both the American Invitation of 30th June, and the European, dated Brussels, 19th September, 1873, which last, bearing the heading "Conférence Internationale pour la réforme et la codification du Droit des Gens," was signed by one Belgian, the late Auguste Visschers, who had been President of the Peace Congress, Brussels, 1849, and whom the Conference elected as its President, and by two Americans, the late Hon. David Dudley Field, President of the American International Code Committee, and the late Rev. James B. Miles, Secretary, as Delegates of the Provisional Committee for convening the Conference. At an initial meeting held in New York, 15th May, 1873, a Committee of five had been appointed to act for the United States in the matter of calling a meeting for consultation upon the best method of preparing an International Code, the said Committee being composed of David Dudley Field, LL.D., Theodore Dwight Woolsey, D.D., LL.D., Emory Washburn, LL.D., William Beach Lawrence, LL.D., and the Rev. James B. Miles, D.D., Secretary, who as such Committee, signed, on 30th June, 1873, an Invitation to Publicists to meet in Brussels, 10th October following.

Of the New York meeting, 15th May, 1873, the two leading results were 1stly, the formation of the American International Code Committee, with Elihu Burritt, Charles Sumner, Whittier, President Porter, J. V. L. Pruyn, ex-President Hopkins, of Field's own *Alma Mater*, as members, besides Dudley Field himself, and a goodly array of other distinguished American names *quos perscribere longum*; and 2ndly, the foundation of the Association for the Reform and Codification of the Law of Nations.

Yet another result, we may fairly say, and scarcely less a leading result, was the republication, in 1876, of the famous *Outlines of a Code of International Law*, a work with which the name of David Dudley Field must always be associated no less than with his celebrated *Civil Code* for the State of New York, which has been adopted, so we learn, in as many as twenty-four States and Territories of the Union.

The object at which David Dudley Field aimed in International Law is still a goal which has to be reached. The memory of his life-long labours may well encourage us to continue the good fight which he fought, until the goal be reached.

Auguste Couvreur, whose loss we have to regret at an age when we might have hoped for some years yet of intellectual activity on his part, was born in Ghent in 1828. The son of a Journalist, he himself early adopted Journalism as his profession, and became distinguished in it, as his old colleagues of the *Indépendance Belge* rightly said of him, because he loved it. "Couvreur aimait son métier de journaliste, et c'est pour cela qu'il y excellait (*Indépendance Belge*, Brussels, 24th April, 1894)."

For twenty-five years Couvreur had been a contributor to that Belgian daily paper with which his name must always be associated. For some years he had also been Brussels Correspondent of the *Times*, which recorded its sense of the loss sustained by his sudden and unexpected death in its obituary notices, on the 24th April, the very same day

that his own countrymen pronounced his panegyric in the words above cited. But Couvreur was much more than a Belgian journalist and a *Times* Correspondent. He was an Economist, an ardent promoter of the study of Social Science, and an unflinching Liberal politician, as well as a veteran in Philanthropy.

In his political character he was for twenty years, from 1864 to 1884, a prominent member of the Belgian Chamber of Representatives, having been sent to the Chamber as a Representative for Brussels in 1864, by the votes of the "jeunes libéraux," who, as the *Indépendance Belge* says, were the Progressives of that day. To the Liberal cause, in the broad sense in which he understood it, Auguste Couvreur remained staunch to the last, one of his very latest writings being an address urging united action of all sections of the Party in defence of their common principles, which attracted considerable attention at the time, and will probably now have still greater effect as being his last political utterance. He was resolutely attached to Commercial freedom, and defended it warmly both by speech and pen. He was the promoter and long the mainspring of the International Association for the progress of the Social Sciences, whose meetings at Brussels, Ghent, Amsterdam, and Bèrne, attracted considerable attention, and was one of the founders of the Association for Customs Reform. In this last connection he had fitly been named one of the Vice-Presidents of the International Congress on Customs Legislation and the Organisation of Labour, which is to meet at Antwerp in July. For several years he was Editor of the *Economiste Belge*, founded by Gustave de Molinari, while in his political character he was so distinguished as to have been one of the Vice-Presidents of the Chamber of Representatives. Auguste Couvreur has left behind him, in the words of his old fellow-workers, the reputation of "honnête homme, . . . homme de

travail et de conscience, . . . libéral sincère et loyal, . . . patriote dévoué au bien public."

We may add, from our own recollection of him in 1873, that Auguste Couvreur was also an earnest advocate of International Arbitration and of Peace. He had been associated with Cobden and the late Henry Richard, M.P., alike in the cause of Free Trade and in that of Peace, and he was fitly named a member of the Committee on International Arbitration appointed at the recent London Conference of the Association for the Reform and Codification of the Law of Nations, as was, equally fitly, David Dudley Field. Auguste Couvreur and Dudley Field were both in their several ways *pacis cultores*. To both of them, therefore, we hope, may fairly be applied that most musical of the Beatitudes, *Beati Pacifici*.

C. H. E. CARMICHAEL.

#### IV.—FOREIGN MARITIME LAWS: V. PORTUGAL.

##### TIT. II.

##### *Insurance against perils of the Sea.*

595. The rules laid down in Chap. I. and Chap. II., Sect. 1 of Tit. XV., Book II., so far as they are compatible with the peculiar nature of Marine Insurance and are not affected by the regulations of this Title, apply to the contract of insurance against sea perils.

[Book II., Tit. XV., *Insurance*; Chap. I., *General Provisions*.

Art. 425. All Insurances except Mutual ones are commercial as regards the insurer, whatever the object is and as regards the assured when the objects insured are merchandize or goods intended to be used in trade, or any business premises.

§1. Mutual Insurances are regulated by the provisions of this Code so far as any commercial matters outside the Mutual agreement are concerned.

§2. Marine Insurance is specially regulated by the provisions applicable to it in Book III. of this Code.

426. A Contract of Insurance must be in a written document which constitutes a Policy of Insurance.

§1. An Insurance Policy must be dated and signed by the insurer (underwriter) and must state :

1. The name or names of the firm, and the residence or domicile of the insurer.
2. The name or names of the firm, and the status, residence or domicile of the assured.
3. The subject matter insured and its nature and value.
4. The perils insured against.
5. The time at which the perils (insured against) commence and terminate.
6. The amount insured.
7. The Insurance Premium.
8. And all such circumstances as may concern the insurer as well as all conditions agreed on by the parties.

F. 332.

427. An Insurance Contract is governed by the conditions contained in the policy which are not illegal, and in the absence or insufficiency of such by the provisions of this Code.

428. An insurance may be made either for ourselves or on account of another person.

§1. If an insurance is made for a person or in the name of a person who has no interest in the subject matter of the insurance, the insurance is void.

§2. If the policy is not declared to be on account of another person it is deemed to be made on behalf of the person making it.

§3. If the interest of the assured is limited to a share in a thing which is insured in full, or to some right over it, the insurance is deemed to be made on account of all concerned, preserving to each the right to receive the insurance in proportion to his premium.

429. Any inaccurate declaration as well as any concealment of facts or circumstances known to the assured or to the person

making the insurance, and which might have an effect on the existence or conditions of the contract, render the insurance void.

§1. If the person making the declarations has acted *mala fide*, the insurer is entitled to retain the premium.

430. An insurer may re-insure with another person the thing he has himself insured, and the assured may insure his premium of insurance with another person.

431. If the property in the article insured is transferred during the period of the insurance, the insurance passes to the new owner by the act of transfer of the property insured, provided that any matter outstanding between the insurer and the original assured in connection with it is adjusted.

Chap. II. *Insurance Against Dangers.* Sect. I. *General Provisions.*

432. An insurance against peril may be effected :

1. On a whole concern composed of many articles.
2. On the whole of each individual article.
3. On a share of each article either jointly or severally.
4. On anticipated profits.
5. On growing crops.

433. If an insurance against perils is for a less sum than the value of the thing insured, the assured will, in the absence of an agreement to the contrary, be responsible for a proportional part of losses and damages.

§1. If an insurance is for less than the value of the thing insured, the difference in value may be insured, and the insurer of the difference will be answerable for the excess, note being taken of the respective dates of the contracts.

§2. If all the insurances are of the same date each will be effective to secure the total value in proportion to the sum insured by each.

434. The assured may not, under penalty of rendering it void, effect a second insurance for the same time and against the same peril upon the same article for its full value except in the following cases :—

1. When the second insurance is conditional on nullity of



the first, or on the partial or total insolvency of the first insurer.

2. When the rights under the first insurance are made over to the second or renounced.

435. If the amount insured exceeds the value of the thing insured, the insurance is only valid up to this value.

436. An insurance is void if at the time the contract is made the insurer is aware that the risk has terminated, or if the assured or the person effecting the insurance is aware that a disaster has occurred.

- §1. In the former case the insurer has no right to the premium, in the second he is under no obligation to indemnify the assured but has a right to retain the premium.

437. An insurance is of no effect :

1. If the thing insured is not exposed to the peril.
2. If a disaster results from an inherent defect known to the assured and not disclosed to the insurer.
3. If the disaster is occasioned by the assured himself or by a person for whom he is civilly responsible.
4. If the disaster is caused by war or insurrection of which the insurer has not undertaken the risk.

- §1. In the first case the insurer has a right to half of the agreed premium not exceeding half per cent. of the amount insured.

- §2. The assured, within eight days of receiving information of the existence of an inherent defect in the thing insured which would, unless declared, invalidate the insurance, must give notice of it to the insurer, and he may declare the policy to be of no effect on restoring half the unearned premium.

438. If the assured becomes insolvent before the risk is terminated and owes the premium, the insurer may require security, and if it is not forthcoming may annul the contract.

- §1. The assured has a similar right if the insurer becomes insolvent or goes into liquidation.

439. All loss and damage that the thing insured sustains due to accident or circumstances beyond control of which he has undertaken the risk are at the charge of the insurer.

§1. The indemnity payable by the insurer is settled by the value of the thing insured at the time of the accident, having regard to the provisions of Art. 448\* and the following paragraphs.

1. If the value is assessed by arbitrators nominated by the parties, the insurer cannot dispute it.
2. If this has not been done, the value may be proved by any legal evidence.

§2. The assured has no right to abandon to the insurer things saved from the disaster, and the value of such things is not included in the indemnity payable by the insurer.

440. The assured must, under penalty of being himself liable for loss and damage, give notice to the insurer of any disaster within eight days following that on which it occurred or on which he obtained information of it.

441. An insurer who pays for injury to or loss of the things insured, is subrogated to all the rights of the assured against a third party who has caused the disaster, the assured being answerable for every act by which he has prejudiced such rights.

§1. If the indemnity only covers a portion of the damage or loss, the insurer and the assured can agree to avail themselves of such rights each in proportion to the amount due to him.]

596. A policy of Marine Insurance must state, in addition to the matters prescribed in Art. 426 :

- (1.) The name, description, class, nationality and tonnage of the ship ;
- (2.) The name of the Commander ;
- (3.) The place to which the cargo is or ought to be carried ;
- (4.) The port for which the ship has sailed, will sail, or is intended to sail ;

\* This Article relates to growing crops.

(5.) The ports at which the ship is intended to load or discharge or call.

§ 1. If the statements required by this Code cannot be made, either because the person making the insurance is ignorant of them or on account of any peculiarity in the insurance, other declarations must be substituted for them sufficient to define the object insured.

F. 332, I. 605, H. 592, R. 550, S. 738. E. 174.

597. An insurance against sea perils may be effected on all things and values that can be assessed in money that are exposed to the peril.

B. 168, F. 334 (1885), G. 782, 783, I. 606, H. 593, 594, R. 538, 545, S. 743, Sc. 230. E. 175.

598. An insurance against perils of the sea may be made in time of peace or of war, before or during a voyage, for a whole voyage or for a fixed period, for a voyage both out and home, or for either singly.

F. 335, I. 609, H. 594, S. 744. E. 177.

599. When the captain or owner insures cargo, it can only be insured for nine-tenths of its actual value.

S. 750. E. 187.

600. Insurances are void which are made upon :—

- (1.) Wages and earnings of the crew ;
- (2.) Goods which are bottomried for their full value and without the insured perils being excepted ;
- (3.) Things the trade in which is contraband by the law of the kingdom, and ships, whether national or foreign, engaged in carrying them.

B. 168, 176, 184, 191, F. 334 (1885), 347 (1885), G. 784, 790, I. 607, H. 599, R. 547, S. 781. E. 190.

601. Goods that are carried may be insured for their full value, reckoning their invoice price, together with the expenses of loading and freight, or reckoning their price current at their destination on arrival without damage.

§ 1. A valuation made in the policy which does not state on which basis it is made may be

referred to either of those herein defined, and Art. 435 does not apply to it unless the value is in excess of the highest price.

B. 187, F. 332, 339, G. 790, I. 612, H. 612, 613, 615, R. 551, S. 752, 754, Sc. 233. E. 182.

602. If the policy is silent as to the period of the risk taken by the insurer, it will commence and terminate as follows:—

- (1.) As to the ship and its appurtenances, from the time she weighs anchor to leave port until she is anchored and secured in her port of destination.
- (2.) As to cargo, from the time the goods are taken on board the ship or into lighters intended to take them to the ship until they are landed at their destination.

§ 1. If the insurance is made after the voyage has begun, the period of risk runs from the date of the policy.

§ 2. If the discharge is delayed by the default of the consignee, the insurer's risk terminates thirty days after the arrival of the vessel at her destination.

B. 172, F. 328, 341, G. 827, 828, H. 624-634, I. 448, 601, 611, R. 557-559, S. 738 (11). E. 168, 184.

603. The liability of the insurer is limited to the sum insured.

§ 1. If the subject matter of the insurance sustains successive accidents during the period of the insurance the assured must bring into account, even in case of abandonment, sums paid to him or which are due for previous accidents.

G. 845, I. 624, R. 568, Sc. 253.

604. Unless otherwise agreed, all losses and damages that happen to the things insured during the period of the insurance by tempest, shipwreck, stranding, collision, compulsory change of course, voyage or ship, jettison, fire,

unlawful attack, explosion, leakage, theft, or quarantine imposed, and in general by all other perils of the sea, are at the risk of the insurer, except such matters as those in which, by the inherent quality of the thing, by law or an express clause in the policy the insurer is free.

§ 1. An insurer is not liable for the barratry of the Commander unless specially agreed, and such agreement will, moreover, be of no effect if a Commander mentioned by name is subsequently changed without the knowledge or consent of the insurer.

§ 2. An insurer, who expressly agrees to undertake war risks without precise specification of them, is answerable for loss and damage caused to the things insured by operations of war, reprisal, embargo by order of State, capture and attack of all descriptions, by the act either of a friendly or inimical government, whether existing *de jure* or *de facto*, recognised or unrecognised, and in general for all incidents and accidents of a state of war.

§ 3. An increase of premium stipulated for in time of peace for the contingency of a war or other event, but the amount of which is not stated in the contract, will be settled by taking into consideration those perils, circumstances, and stipulations that are mentioned in the policy.

B. 173, 178, 184, F. 350, 352, 353, G. 824, 825, 852, 853, I. 610, 615, 616, 618, H. 637, 640, 641, R. 539, 550 (n.), 555, S. 755, 756, 767, Sc. 248, 249. E. 186, 192, 195.

605. Where there is a doubt as to the cause of the loss of the things insured it is presumed to have been by perils of the sea, and the insurer is liable.

B. 186, G. 865, 866, I. 633, H. 667, S. 798, Sc. 258. E. 215.

606. A condemnation by a foreign Prize Court carries a

simple presumption of its validity in questions relating to insurances.

H. 658.

607. An insurer is not answerable for the expenses of the voyage, pilotage, towage, health visit, and other charges made on the ship on entering or leaving port, and tonnage, light, anchorage, health officer, and other similar charges on ships and cargo, unless they are of such a character as to be included in General Average.

F. 354, I. 619, R. 572. E. 196.

608. Every voluntary deviation in the course, alteration in the voyage, or change of the ship by the assured, frees an insurer of ship or freight from liability.

§ 1. The provisions of this Article apply to an insurance on cargo where the assured has agreed (to the deviation).

§ 2. An insurer in the case provided for in this article and in § 1 has a right to the whole premium if the period of the risk has commenced.

B. 182, F. 351, G. 817, 818, I. 617, H. 638, 639, R. 572 (8), S. 756 (1), Sc. 255. E. 193.

609. If the insurance is on merchandise for a voyage out and home, and if the ship after reaching her first port of destination does not load a return cargo, or only loads a part cargo, the insurer will only get two-thirds of the premium unless otherwise agreed.

B. 186, F. 356, I. 620, R. 579, S. 757, E. 198.

610. When an insurance is properly made on goods to be carried in different ships, with special notice of the amount secured on each, if the goods are, in fact, shipped in a less number of vessels than is specified in the policy, the insurer is only answerable for the amount that he has insured in the vessel or vessels which receive the cargo.

§ 1. An insurer may in the case provided for in the article receive half the agreed premium

in respect of the goods whose insurance has been without effect, provided always such indemnity does not exceed  $\frac{1}{2}$  per cent. of their value.

B. 194, F. 361, G. 820, 821, I. 621, H. 652, S. 759. E. 203.

611. If the Commander is at liberty to touch at a port to complete or load a cargo, the insurer does not take the risk of the articles insured until they are stowed on board, unless otherwise agreed.

F. 362, I. 622. E. 204.

612. If the assured orders the ship to a more distant place than is mentioned in the policy, the insured does not undertake the risks of the additional voyage.

§ 1. If on the other hand the voyage is shortened, by being brought to an end at a port of call, the insurance remains of full force.

B. 195, F. 364, G. 817, I. 623, H. 653, R. 579, S. 763. E. 206.

613. The clause "free of average" frees the insurer from all and every damage, except in cases which give rise to an abandonment.

B. 198, I. 625, H. 646, R. 573.

614. If the insurance is on liquids or on goods which are liable to deteriorate or waste, an insurer does not answer for losses unless they are caused by striking, shipwreck, or stranding of the ship, and also by discharging and reloading in a port of distress.

§ 1. When an insurer is obliged to pay for damages referred to in this Article, he may deduct the ordinary waste.

B. 185, F. 352, 355, G. 825 (3), I. 615, H. 643, R. 572 (8), 575, S. 756 (6). E. 197.

615. The assured must give notice to the insurer within five days of the receipt of documents which shew that the goods insured were exposed to the perils and were lost.

B. 208, F. 374, G. 822, I. 627, H. 654, R. 560, 561, S. 765, Sc. 245. E. 214.

F. W. RAIKES.

## V.—CURRENT NOTES ON INTERNATIONAL LAW.

### Extradition.

The functions of a magistrate committing a prisoner for extradition were discussed in *The Queen v. Lushington*, L.R. [1894] 1 Q.B. 420. The question was whether he had power, under sect. 9 of the Extradition Act, 1870, to order the police to take charge of articles alleged to have been stolen by the prisoner and brought into Court by a purchaser under a *subpœna duces tecum*, in order that they might be produced upon the prisoner's trial in France. The Court (Wright and Kennedy, J.J.) expressed a view favourable to the contention that the magistrate had such a power, but actually decided the case upon other grounds.

*À propos* of this subject, it should be noted that new Extradition Treaties have very recently been entered into by this country with the Argentine Republic (see *London Gazette*, 1894, p. 579), Portugal (*ibid.*, p. 1,438), and Liberia (*ibid.*, p. 1,518).

\* \* \*

### Foreign Sovereigns and Ambassadors.

The interesting cases of *Musurus Bey v. Gadban* and *Mighell v. Sultan of Johore*, which have already been commented upon in these *Notes*, have now been fully reported in L.R. [1894] 1 Q.B., p. 533 and p. 149 respectively. The Court of Appeal have very recently affirmed the decision of the Divisional Court.

\* \* \*

### Foreign Judgments.

In *Crozat v. Brogden and Others*, 9 Rep. 226, the Court of Appeal decided that security for costs against a plaintiff who is a foreign resident out of the jurisdiction, may be



obtained as well where the action is upon a Foreign Judgment as in any other case. Lord Esher, M.R., incidentally remarked that the plea raised by the defendant that the Judgment was obtained by the false statements of the plaintiff himself, was a good plea to such an action.

\* \* \*

#### Foreign Immoveables.

In the case of *In the Goods of Tamplin*, L.R. [1894] P., p. 39, it was sought to include a will made in English form by a Testator domiciled in England disposing solely of Russian immoveables, in the probate of another English will of personalty and English realty. The former will was not in the form of the *lex loci situs*. Gorell Barnes, J., refused the application, and made some instructive comments upon the general law as to foreign immoveables as laid down by Lord Selborne in the familiar case of *Freke v. Lord Carbery*, L.R. 16 Eq. 461.

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#### Contracts.

What will probably become a "Leading Case" upon the subject of the Private International Law of Contracts was decided very recently by the House of Lords in the matter of *Hamlyn & Co. v. The Talisker Distillery and Others* (see *Times* for 11th May, 1894, and *W.N.* for that week). The question, in brief, was as to whether Scotch or English Law governed a certain arbitration clause in an agreement. The clause was admittedly bad by Scotch Law but good by English. The agreement was executed in England, but one of the parties was a Scotch firm, and the place of performance was Scotland. The House of Lords, however, held that English Law applied, basing their decision upon the intention of the parties as deducible from all the circumstances attending the contract. The Judgments contain a most valuable and authoritative affirmation of the general principles

applicable to such cases laid down by the Court of Appeal in the *Missouri* case (42 Ch. D. 321). It should be further noted that another excellent illustration of the principles of Private International Law applicable to contracts is afforded by the very recent case of *The Industrie*, 1894 (6 Reports), 31.

• JOHN M. GOVER.

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## Quarterly Notes.

### The Public Franchise in Highways in U.S.A.

#### *Report of the Master in Equity in Potts v. Quaker City Elevated Railroad Co.*

We have been favoured by Mr. Dallas Sanders, Examiner and Master in Equity of the Court of Common Pleas, No. 3, for the City and County of Philadelphia, with a copy of his recent able *Report* to the Judges on what is even now the *cause célèbre* of *Potts, Wallace et al., Lippincott, Sternberger, and Sullivan et al. v. Quaker City Elevated Railroad Company*, as referred to him by Court on 24th December, 1892. The case is, we learn, from the Master's letter covering the despatch of the *Report*, to be appealed to the Supreme Court of the State of Pennsylvania, as the identical question has never been decided in that State. Whatever may be the decision of the Supreme Court, we cannot doubt that it will endorse the opinion of the Court of Common Pleas, No. 3, in its ruling on the exceptions filed by the Quaker City Company against the Master's Report, when the Court, in discussing the exceptions, said that the able report of the Master relieved them of the necessity of reiterating or adding to their views as already expressed, when the Court first granted an injunction against the Company (*Public*

*Ledger*, Phila., 24th January, 1894). The learned Master, in order to decide the first question, whether the defendant Company was one that could be incorporated under the General Railroad Act of the State, 1868, reviews the entire Railroad Legislation of Pennsylvania, from the grant of the first Passenger Railway Charter in 1857 down to the Act of May 14th, 1887, "to provide for the incorporation and government of street railway companies" in that Commonwealth. In the course of this survey he shews, conclusively to our own mind as to his, that the only powers for elevating or depressing Street Railroads in Pennsylvania were granted with a view to the special case of what are there called "grade crossings," and which we call level crossings. The dangers constituted by such crossings are well-known in this country, and we cannot therefore be astonished at special provision having been made by the State of Pennsylvania to meet such cases. But it is impossible logically to argue from the particular permission to elevate or depress in such cases a general permission to construct elevated Railroads, and we are therefore quite in accord with the finding of the Master against such general permission being read into the special and limited permission intended to provide for the safety of the public at level crossings.

The Master appears to us clearly to shew the distinction taken throughout by the State of Pennsylvania between ordinary Railways, which carry goods as well as passengers, and Street Railways which carry only passengers, and are so restricted by their covenant with the City of Philadelphia in the case before him, as also in all the Judgments and definitions of Text-writers cited for the purpose of shewing what the Courts and Text-books have held to be the distinguishing marks of a Street Railway.

A very subtle point was attempted to be taken by the Quaker City Elevated Railroad Company in their answer to

the Bill of the plaintiffs, and that, it would certainly appear to any plain mind, in the teeth of their own name as a company. For they denied, *inter al.*, that they were about to "erect or operate an elevated street passenger railway," but averred that they intended to "construct and operate a steam railway elevated over the surface of the street," thus relying, it would seem, upon the question of the motive power and not that of position. But the Judgments cited by the learned Master in his *Report* amply suffice to demonstrate to our satisfaction, as to his own, that the difference between railroads for general traffic and street passenger railways consists in their use and not in their motive power, as *per* Caldwell, J., in *Williams v. City Electric Street Railway Co.*, 41 Fed. Rep., 556 (1890). To the same effect, *Booth on Railways*, 8th Ed., 1892, and other authorities cited in the *Report*. On the second question before the Master, as to whether, granting the incorporation of the Quaker City Co. under the General Railroad Act of 1868, the Corporation would be entitled to locate its railroad upon the streets of Philadelphia, we understand that the latest edition of *Wood on Railways*, not published at the time the Master made his *Report* (dated 15th January, 1894), sustains the law of his conclusion against the Company. There are some singularly interesting historical features in the case in regard to the character of Market Street, the site of the proposed Elevated Railroad, and its antiquity as a public highway, and some very strong deliverances of the Courts are cited by the Master on the franchise of the Highway as an easement of the Public. Market Street, it is stated in the *Report*, was laid out by William Penn in 1684, under the name of High Street, as a highway for the use of property owners and the general public. Now a "public street," said the Court, in *Pennsylvania Railroad Co.'s* appeal, 12 Harris, 160, "is a public franchise, and cannot be violated except by direct legislative grant," and, as

Black, J., tersely puts it in *Commonwealth v. Erie and North-East R. Co.*, 27 Pa. St., 339, "a doubtful charter does not exist; for whatever is doubtful is decisively against the Corporation." On the sacredness of a highway, Gordon, J., in *Pennsylvania R. R. Co. v. Philadelphia Belt Line R. R. Co.*, 1 Pa. Dist. Rep. 1 S.C. (28th Dec., 1891), said in the strongest terms, "a highway is a public franchise of the most important character, outranking in sacredness, primary right and inviolability any mere corporate franchise. It is an easement belonging to the entire community without discrimination." We shall be greatly interested in following this case to the Supreme Court, and seeing whether the Philadelphia public are still to enjoy the franchise of the High Street of William Penn.

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#### The Imperial Institute Year Book, 1894.

The new issue of the *Year Book* of the Imperial Institute deserves a passing notice at our hands, and more when space admits. The utility of such a volume is manifest, and is becoming constantly more and more widely recognised. The 1894 issue contains additional matter, both in the way of text and maps and other illustrations, which cannot fail to add to its value. The labour spent upon it by Mr. Hebb has not been spent in vain, and we look forward with confidence to the gradual inclusion of new and varied improvements.

The growth of our Colonies leads naturally to the growth of Constitutional development, which will require noticing in the *Year Book*. When a Colony passes from the embryonic condition of a Crown Colony into the relatively full-fledged condition involved in its erection into a Community with a Representative Government, the fact is a momentous one for the Mother country no less than for the Colony where this change has taken place.

Natal has thus changed, or rather, we would say, developed, and we hope to see the list of such developments increase, as we believe them to be healthy developments, and likely to tend to the benefit of the Mother country no less than of the Colonies. Among Colonists themselves, we sometimes have to remark what may seem curious phases of feeling. Thus, Sir George Dibbs is lately reported to have proclaimed the desirableness of uniting the whole of Australia into one Colony, or, as he seems to have called it, State, under one Governor. This scheme, if it can properly be so called, would, if it were to take concrete form, considerably alter the Australian portion of the *Year Book*. Among the various features which would admit of expansion in the *Year Book*, we may mention one which was suggested at the recent International Medical Congress in Rome, namely, the Climatology of our Colonies, with relation more particularly to their value as Health resorts. Suggestions to this effect were made in the Section of Climatology, where the *Year Book* of the Imperial Institute was brought to the notice of the Hydrological Division of the Congress in a Paper by the Honorary President for Great Britain in that Section, Mr. C. H. E. Carmichael, M.A., F.I. Inst.

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## Reviews.

*The Law relating to Covenants in restraint of Trade.* By JOSEPH BRIDGES MATTHEWS, Solicitor. Sweet and Maxwell, Lim. 1893.

The author tells us in his modestly-worded preface that he has been emboldened to embark upon the present venture in consequence of the favourable reception accorded by the Legal Profession to his *Manual of the Law relating to Married Women*; and after a careful perusal of the work under review we are disposed to prophesy that it will fully maintain, if not further enhance, the writer's already acquired reputation. The treatise is not, as only too frequently happens, a mere congeries of cases strung together in chronological order, but a clear, succinct, methodical, and exhaustive exegesis of the doctrines governing this highly controversial department of Commercial Law. Whether we are able or not to agree with Mr. Matthews in the conclusions at which, after much balancing of divergent views, he has arrived, we cannot deny to him the credit of having bestowed upon his subject that painstaking research, analytical acumen, argumentative skill, and lucidity of statement which are often supposed to be the peculiarly exclusive endowment of the higher branch of the Legal Profession.

The critical examination to which the decisions are subjected and the detail in which they are compared and contrasted are of value, not alone in illustration of the principles enunciated, but as a guide to those whose occupation requires them to thread their way through the perplexing mazes of Judge-made law. For who amongst us has not had the unpleasant experience of citing a portion of a Judgment as conclusively decisive of the contention he is upholding in argument, only to be told by the Court that the passage cited does not precisely cover the exact question which came up for decision in the case quoted, and that therefore it is a mere *obiter dictum*, having no binding force? To those so circumstanced, no less than to the student of legal casuistry generally, Mr. Matthews's Treatise will, we doubt not, prove useful. In a future edition it would be well to correct a

printer's error on pages 61 and 159 where Cleasby, B., is made to take part with Lord Abinger and Baron Parke in the decision of *Ward v. Byrne*, the hearing of which occurred so long ago as 1839. The Judgment quoted is that of Baron Gurney. The Treatise is accompanied by an admirable Digest, and some very serviceable Tables of Cases.

*A Treatise on the Foreign Powers and Jurisdiction of the British Crown.* By WILLIAM EDWARD HALL, M.A., Barrister-at-Law. Oxford: Clarendon Press. London: Henry Frowde, and Stevens & Sons, Limited. 1894.

We have just received this new and interesting work from the well-known pen of Mr. W. E. Hall, whose *Treatise on International Law* is on the shelves of most students of the modern Law of Nations, and all that we can do at this late hour is to call attention to the volume as one peculiarly *ad rem* in connection with the adjourned Debate on the Uganda question. Mr. Hall devotes no small space to the consideration of the subject of Protectorates, of which he says (p. 205) that there is, as he believes, a "cardinal distinction between protectorates of the kind which was formerly familiar, and those which have sprung into existence of late years in the East and in Africa." In fact, "for practical purposes," Mr. Hall holds, "there is no analogy between the two sorts in the essential particular of the authority to which a foreign State must in reason look for due provision of administrative and judicial safeguards of the interests of its subjects." As far as we can see at present, it seems to us that, in regard to some points discussed in his new work, Mr. Hall scarcely does justice to the notice which either the same, or at least similar, points received in Mr. F. T. Piggott's book on *Exterritoriality*, which formed the subject of an Article in the last number of this *Review*. This may be due to the circumstance that Mr. Hall's present contribution to the Literature of this branch of Law was well advanced before the publication of Mr. Piggott's book. In a future number, we hope to be able to give more adequate space to the consideration of some of the topics connected with the interesting subject of Mr. Hall's new volume.



*A Digest of Civil Law for the Punjab.* By W. H. RATTIGAN, LL.D., Barrister-at-Law. Fourth Edition. Allahabad: *Pioneer Press*. 1893.

We are glad to welcome, though for the moment with but a few words, the new and enlarged edition now before us of our valued contributor's excellent and useful *Digest*. The necessity for paying close attention to the Customary Law of India, which forms the basis of Dr. Rattigan's book, is not sufficiently recognised by the Official mind, which generally refuses to attempt to grasp the fact of its existence, and thus often makes ludicrous blunders in dealing with the older native races. To make everybody's personal Law either Hindoo or Mohammedan would no doubt greatly simplify the Judicial work in India, whether for the High Courts or for the Courts presided over by members of the Civil Service. But it would be, and it is, wherever that course is pursued, grossly unfair to the native who should be neither a Hindoo nor a Mohammedan. Dr. Rattigan knows this, and he knows what a varied population, with varied histories and customs, lies at his door in the Punjab, as he has shewn, not only in this book, but also in his valuable series of Articles in the *Law Magazine and Review*. Such a book as his *Digest* should be undertaken by someone equally familiar with the Customary Law of the Dravidian races of Southern India. Had such a spirit as has been shewn by Dr. Rattigan and Mr. J. H. Nelson prevailed at all widely in India, we should probably not have to record the continued existence of such an anomaly as the judging of the Kullens of Southern India, a Dravidian race, by Hindoo Law, which, as Mr. F. Fawcett says, in an interesting Paper read before the Folk Lore Society, 15th November, 1893 (*Folk Lore*, March, 1894), is "as foreign to them as it would be to Maoris, though it is supposed to represent their customs (Heaven knows why!)." We ought to know what the customs of a particular race in India really are, before we assume that Hindoo or Mohammedan Law "represents" their ancestral customs.

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# Quarterly Digest.

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# Quarterly Digest

OF

ALL REPORTED CASES,

IN THE

Law Reports, Law Journal Reports, Law Times  
Reports, and Weekly Reporter,

FOR FEBRUARY, MARCH, AND, APRIL, 1894.

By C. H. LOMAX, M.A., of the Inner Temple,  
Barrister-at-Law.

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## Administration:—

- (i.) **P. D.**—*Grant of—Fund in Name of Deceased—Property of Applicant—Notice—Court of Probate Act (20 & 21 Vict., c. 71), s. 73.*—Moneys belonging to the mother of the deceased were under a misapprehension, paid into a savings bank account standing in the name of the deceased, who died upwards of six years ago. Some of the moneys were paid in after the death of the deceased. Her husband knew of the account but did not take out administration, and left the country for America. *Held*, on motion by the mother, that the Court would not grant her letters of administration without notice to the husband.—*In the goods of Rusch*, 42 W.R. 304.
- (ii.) **P. D.**—*Grant ad Colligenda Bona—Italian Subject—Intestacy—Relatives Abroad—Infant Child.*—A domiciled Italian died intestate, leaving in England an infant child, whom he had formally declared, in accordance with Italian law, to be his lawful child. The deceased left brothers and a sister resident abroad, and possessed property in this country, some of which was perishable. The Court made a grant *ad colligenda bona* to the Italian vice-consul.—*In the goods of Migazzo*, 70 L.T. 246.
- (iii.) **Ch. D.**—*Legacies Vested, but not Payable—Discretionary Annuity—Funds Set Apart—Income of—Tenant for Life and Remainderman.*—The income of a fund set apart to answer a legacy vested, but not presently payable, falls into the residue as capital, and must be treated as such as between the tenant for life of the residue and the remainderman. The unapplied income of a fund set apart to answer an annuity payable at the discretion of trustees belongs to the tenant for life of the residue as income.—*Peacock v. Lucas*, 63 L.J. Ch. 229; 70 L.T. 122.



(i.) **Ch. D.**—*Specific Bequest to Debtor—Retainer by Executors.*—Specific bequest of the profits of a business to be carried on by the executors. The executors may retain the profits against a debt due from the legatee to the estate.—*Taylor v. Wade*, 42 W.R. 373.

(ii.) **P. D.**—*Will Annexed—Testatrix Deserted by Husband—Citation.*—Upon an application for administration with the will annexed of a woman who had been deserted by her husband fifteen years before her death, and had not heard of or from him since the desertion, *held*, that the husband might be passed over without citation.—*In the goods of Shoosmith*, L.R. [1894] P. 23; 63 L.J. P. 64.

### Adulteration:—

(iii.) **Q. B. D.**—*Article of Food—Baking Powder—Mixture Injurious to Health—Sale of Food and Drugs Act, 1875, s. 3.*—The appellant sold a packet of baking powder composed of 20 per cent. of bicarbonate of soda, 40 per cent. of ground rice, and 40 per cent. of alum, the last ingredient being injurious to health. *Held*, that the baking powder was not an article of food, and that the sale was not an offence within the section above mentioned.—*James v. Jones*, L.R. [1894] 1 Q.B. 304; 63 L.J. M.C. 41; 42 W.R. 400.

(iv.) **Q. B. D.**—*Certificate of Analysis—Sufficiency—Unauthorized Addition—Sale of Food and Drugs Act, 1875, ss. 6, 18.*—The certificate given by a public analyst of the result of his analysis, need not set out the constituent parts of the sample analysed, where the case is not one of adulteration; it is sufficient that it states the "result." The "observations" which follow the result, in the form of certificate given in the Act, are only to be made where the case is one of adulteration; but the addition, in cases where adulteration is not charged, of "observations" amounting only to an expression of opinion, and not to a finding of fact, though unauthorized and improper, will not necessarily vitiate the certificate.—*Bakewell v. Davis*, L.R. [1894] 1 Q.B. 296; 69 L.T. 832.

(v.) **Q. B. D.**—*Prosecution—Summons—Insufficient Particulars of Offence—Sale of Food and Drugs Act, 1879, s. 10.*—The omission from the summons in a prosecution under the Act above-mentioned of the particulars of the offence with which the defendant is charged does not deprive the justices of jurisdiction, but merely entitles the defendant to an adjournment if the justices should consider that he is prejudiced by the omission.—*Neal v. Deccush*, L.R. [1894] 1 Q.B. 544; 63 L.J. M.C. 78.

(vi.) **Q. B. D.**—*Spirits—Mixture of Water—Certificate—Sale of Food and Drugs Acts, 1875, ss. 6, 21; 1879, s. 6.*—A certificate of the result of an analysis of a sample of rum, stated "I find that the sample contained an excess of water over and above what is allowed by Act of Parliament. I estimate the excess of water at 13 per cent. of the entire sample. I am of opinion that the sample is not a sample of genuine rum." *Held*, that the certificate was insufficient in that it did not state the proportion of water contained in the rum, and could not support a conviction.—*Newby v. Sims*, L.R. [1894] 1 Q.B. 478; 70 L.T. 105.

### Arbitration:—

(vii.) **Q. B. D.**—*Misconduct of Arbitrator.*—In an arbitration on matters in dispute between the landlord and the outgoing tenant of a farm, the arbitrators having taken evidence held a meeting on the farm, and received information from the tenant, without the knowledge or consent

of the landlord. *Held*, that their conduct was improper, and that the award must be set aside.—*In re Arbitration between Gyson and Armstrong*, 70 L.T. 106.

**Attachment:—**

- (i.) **Ch. D.**—*Debtors Act, 1869, s. 4, sub-s. 3—Partner—Fiduciary Capacity.*—One partner receiving assets of the partnership on account of himself and co-partners, is not liable to imprisonment as a person acting in a fiduciary capacity.—*Piddock v. Burt*, L.R. [1894] Ch. 343; 63 L.J. Ch. 246; 42 W.R. 248.

**Baker:—**

- (ii.) **Q. B. D.**—*Obligation to Provide Scales in Shop—No Summary Penalty—Bread Act, 1822, ss. 8, 9.*—The provisions of sect. 9 which provide a summary penalty for neglect to carry a beam and scales in carts delivering bread, cannot be imported into sect. 8 which imposes an obligation to provide a beam and scales in a baker's shop, but imposes no summary penalty for failure to do so.—*Reg. v. Aerated Bread Co.*, 63 L.J. M.C. 67.

**Banker:—**

- (iii.) **C. A.**—*Bank of England—Composition for Loss of Right to issue Bank Notes—Sale of Business to Company—Bank Charter Act, 1844, ss. 23, 24.*—Where a banker, who is receiving an annual payment from the Bank of England as compensation for the loss of the right to issue bank-notes, ceases to carry on business, the annual payment ceases to be recoverable. Where four banks, two in London and two in the provinces, were purchased by a joint-stock company, one of the provincial banks being entitled to such an annual payment, and the businesses of the four banks were carried on in the same places as before by the company in its own name, *held*, that the banks must be taken to have ceased to carry on their businesses, and that the purchasing company was not entitled to receive the annual payment.—*Prescott, Dimsdale, Cave, Tugwell & Co. v. Bank of England*, L.R. [1894] 1 Q.B. 351; 70 L.T. 7.

**Bankruptcy:—**

- (iv.) **P. C.**—*Act of—Bill of Sale—Fraudulent Assignment—Jurisdiction of Court.*—A bill of sale, including the whole of a trader's property, given as security for an advance, with a promise of further assistance, made in good faith, to enable him to carry on his business, and in the reasonable belief that he will thereby be enabled to do so, is not a fraudulent assignment and an act of bankruptcy, though the trader was in fact insolvent at the time. The Court of Bankruptcy in Jamaica has power to revoke a provisional order, or to annul an adjudication under sect. 151 of the Bankruptcy Law, 1879, without going to the Court of Appeal.—*Administrator-General of Jamaica v. Lascelles*, 70 L.T. 179; 42 W.R. 416.
- (v.) **Q. B. D.**—*Act of Bankruptcy—Notice of intention to Suspend Payment—Costs of Solicitor and Accountant—Bankruptcy Act, 1883, ss. 41, 43, 44.*—The debtor, on the advice of his solicitor, posted a circular to his creditors, stating that his "financial difficulties" made it desirable for him to consult his creditors as to his position. The circular also stated that a statement was being prepared by accountants to be submitted to the creditors. A meeting of the creditors was afterwards held, at which a statement was submitted, and a receiving order was afterwards made. Between the dates of the circular and of the receiving

order the accountant received moneys on account of the debtor, out of which he paid the solicitor a sum of £130 on account of costs, and retained £100 for the preparation of the statement. *Held*, that the circular was an act of bankruptcy, and that the sums of £130 and £100 must be repaid to the trustee as payments made with notice of an act of bankruptcy. Though a trustee in bankruptcy may adopt and pay for services rendered to a bankrupt after notice of an act of bankruptcy, where such services have resulted in benefit to the estate commensurate with the services, he must be very strict in the application of the rule.—*In re Simonson*; *e. p. Ball*, L.R. [1894] 1 Q.B. 433; 70 L.T. 32.

(i.) **C. A.**—*Appeal—Trial—Extension—Bankruptcy Rules*, 1886, rr. 130, 351.—An order of the Court was signed by the registrar and sealed on December 1st, and was filed next day. Notice of appeal was served on December 23rd. *Held*, that the order was perfect when signed and sealed, and that the appeal was out of time. *Held*, also, that the mistake of the appellant's solicitor was not such a special circumstance as would enable the Court to extend the time for appealing.—*E. p. The Trustee*, *in re Helsby*, 70 L.T. 144.

(ii.) **Q. B. D.**—*Assets—Earnings—Partner in Firm of Dentists—Personal Skill*.—The earnings and profits of a partner in a firm of dentists do not fall within the rule which saves professional and personal earnings from passing to the trustee. *Semble*, that the fact that the bankrupt had himself mortgaged his share of the profits and earnings, deprives them of the character of professional earnings.—*Collins v. Ford*, 68 L.J. Q.B. 178; *e. p. Rogers*; *in re Collins*, L.R. [1894] 1 Q.B. 425; 70 L.T. 107.

(iii.) **Q. B. D.**—*Administration of Deceased Debtor's Estate—Discretion—Bankruptcy Act*, 1883, s. 125.—The Court has a wide discretion as to granting a creditor an administration of the estate of a deceased insolvent debtor. An action was commenced against a firm for money lent, and one of the partners died on the day of service of the writ. Judgment was obtained against the survivors. *Held*, that such judgment did not wipe out the liability of the estate of the deceased partner, and that a petition by the creditor for the administration of the estate of such partner ought to be allowed, but that the proceedings ought, under the circumstances, to be transferred to London, the official receiver being appointed trustee.—*E. p. Ashworth*; *in re Outram*, 69 L.T. 767.

(iv.) **Q. B. D.**—*Annulment—Bankruptcy Act*, 1883, s. 35, sub-s. 1.—A friend of the bankrupt bought up what were alleged to be all his debts, amounting to £1,654, for a small sum, and then assigned them back to the bankrupt for £1,654, which sum was provided by another friend. On an application to annul the bankruptcy, the bankrupt and the witnesses to the deeds filed affidavits, but the bankrupt did not attend, though notice of cross-examination had been given to him. *Held*, that this did not amount to payment in full of all his debts so as to entitle him to annulment; and that there was not sufficient proof that all the bankrupt's debts had been bought up.—*E. p. Official Receiver*; *in re Burnett*, 42 W.R. 368.

(v.) **C. A.**—*Appeal—Notice to Registrar—Irregularity—Extension of Time—Bankruptcy Act*, 1883, ss. 104 (d), 105 (4), 143—*Bankruptcy Rules*, 1886 and 1890, r. 132.—In an appeal from an order in bankruptcy made in a county court, the Court ought not, except under special circumstances, to extend the time for giving notice of appeal to the registrar of the county court; nor ought the omission to give such notice be treated as an irregularity which can be cured.—*E. p. Spanish Corporation*; *in re Vitoria*, L.R. [1894] 1 Q.B. 259.

- (i.) **Q. B. D.**—*Bill of Sale—Payment by Instalments.*—A bill of sale was given to secure the payment of £200, with interest at 6d. in the pound per month, the principal and interest to be paid by weekly payments of £2 6s. 2d. After receiving order made against the borrower, of which the lender was unaware, a second bill of sale was given in substitution for the first. *Held*, that the second bill of sale did not cancel the first, and that, as the statutory form contemplated payment of both principal and interest by instalments, and did not define the number of instalments, the first bill of sale was not void.—*Bargen v. Hasluck*, L.R. [1894] 1 Q.B. 444; 69 L.T. 764.
- (ii.) **Q. B. D.**—*Consolidation of Proceedings—Separate Petitions by Partners—Bankruptcy Act, 1883, s. 112.*—The Court has power to direct the consolidation of the proceedings under separate petitions by members of a partnership, even though the partnership had been dissolved at the date of the petitions, there being joint assets and joint liabilities still subsisting.—*E. p. Official Receiver; in re Abbott*, L.R. [1894] 1 Q.B. 442; 63 L.J. Q.B. 253; 69 L.T. 765.
- (iii.) **C. A. & Q. B. D.**—*Disqualification—School Board Election—Retrospective—Bankruptcy Act, 1883, s. 32.*—The section disqualifying a bankrupt from being elected a member of a school board is not retrospective, and does not apply to persons adjudged bankrupt before the date of the Act.—*Bowie v. Nutt*, 70 L.T. 25; 42 W.R. 888.
- (iv.) **C. A.**—*Estate of Bankrupt—Following Trust Moneys.*—Trustees authorised a banking firm to receive £1,600, the proceeds of debentures of a company which were being paid off. The bank knew that the moneys were trust moneys. Having other transactions with the company the bank did not actually receive the £1,600, but balanced its accounts with the company, and credited the trustees with £1,600. The bank daily transferred its receipts to London, and on the day of suspension of payments had a balance to its credit in London. *Held*, that there was nothing in the above transactions to show a receipt, either by the bank, or by its London agents, of any actual sum of £1,600, so as to enable it to be followed as trust money.—*E. p. Blane; in re Hallett*, 63 L.J. Q.B. 67; 42 W.R. 305.
- (v.) **Q. B. D.**—*Married Woman—Separate Trade—Married Women's Property Act, 1882, s. 1, sub-s. 5.*—To bring a married woman within the section above-mentioned, and make her subject to the bankruptcy laws, it must be proved that she is carrying on a trade separately from her husband, and that the property in respect of which she is trading is her separate property. A married woman cannot be made subject to the bankruptcy laws in respect of a business which is by reason of partnership or otherwise under her husband's control; nor where the husband is liable to be sued, although as between him and his wife the property derived from the trade may be the wife's property entirely.—*In re Helsby*, 69 L.T. 864; 42 W.R. 218.
- (vi.) **Q. B. D.**—*Money paid to Solicitor—Defence on Criminal Charge—Right to Retain.*—A solicitor agreed in writing with a person charged with murder to conduct his defence and provide the necessary expenses for a lump sum, which was paid. Some days afterwards the client committed an act of bankruptcy, of which the solicitor had notice, and a receiving order was made. The solicitor conducted the defence. The trustee applied for the return of the money. *Held*, that the agreement was legal and binding, and that the solicitor was entitled to retain the money.—*In re Charwood; e. p. Masters*, L.R. [1894] 1 Q.B. 643.

- (i.) **Q. B. D.—Partners—Separate Estate—Proof by Solvent Partner against Insolvent.**—Where a partnership is insolvent, and a proof is tendered by a solvent partner against the separate estate of an insolvent partner in respect of a separate debt, it may be admitted, although the dividend to be received from the insolvent's estate will increase the surplus which will eventually go from the solvent's estate to pay the joint debts of the partnership. —*In re Head*; *e. p. Head*, L.R. [1894] 1 Q.B. 688; 63 L.J. Q.B. 206, 70 L.T. 35.
- (ii.) **Q. B. D.—Preferential Payments—Debt due to Friendly Society by Officer—Friendly Societies Act, 1875, s. 15 (7).**—The trustees of a friendly society are entitled, upon the bankruptcy of the Secretary, who was by the rules entitled to receive certain moneys due to the society, though bound to hand them over at once to the treasurer, to be paid the balance due from him in preference to other creditors; such moneys are in his possession by virtue of his office, though he ought to have handed them over at once to the treasurer.—*E. p. The Trustee*; *in re Welch*, 42 W.R. 320.
- (iii.) **Q. B. D.—Proof—Debt proved in former Bankruptcy—Revival of.**—A debtor, in order to secure a present advance, agreed to revive a debt due to the lender, which had been proved for in a former bankruptcy, and gave promissory notes for the amount of the old debt. The debtor again became bankrupt, and the lender sought to prove on the notes. *Held*, that the promise to revive and pay the old debt was not illegal; and that, as there was nothing in the circumstances of the case to justify the Court in supposing that the borrower did not intend to pay the old debt, the proof ought to be admitted.—*In re Aylmer*; *e. p. Aylmer*, 70 L.T. 244.
- (iv.) **Q. B. D.—Solicitors' Costs—Employment before Petition.**—A firm employed solicitors to investigate their affairs, and placed in their hands £50 to cover costs. The solicitors employed an accountant to examine the books of the firm, and paid his charges. The accountant was engaged before the solicitors had notice of a petition, but his charges were paid after such notice. The solicitor afterwards incurred costs in resisting the petition and in rendering other services to the debtors after receiving order. *Held*, because they had pledged their accountant's charges out of the use of the petition. *Held*, that they credit to the account of their own costs.—*E. p. Official Receiver*; *in re Whitlock*, 63 L.J. Q.B. 245; 70 L.T. 34.
- v.) **Q. B. D.—Transfer of Action—Foreclosure—Bankruptcy Act, 1883, s. 102, sub-s. 4.**—A trustee in bankruptcy applied for the transfer for trial to the judge in bankruptcy of two foreclosure actions commenced against the bankrupt, the mortgagor, by originating summons in the Chancery Division, in which the trustee had been joined as a co-defendant. *Held*, that as there was no question of priorities, but only of the validity of the mortgages, in which the trustee's title could not be better than the bankrupt's, the transfer ought not to be made.—*E. p. Kemp*; *in re Campaigne*, 69 L.T. 763.
- i.) **Q. B. D.—Undischarged Bankrupt—Property acquired by—Second Bankruptcy—Right to Property—Bankruptcy Act, 1883, s. 44.**—An undischarged bankrupt acquired some property by trading, and became bankrupt a second time. The trustee under the first bankruptcy failed to assert his title to the property until after the second bankruptcy. *Held*, that the title of the trustee under the second bankruptcy had attached, and that the property must be administered by him in the second bankruptcy, without prejudice to the claim, if any, of the creditors under the first bankruptcy to rank for proof.—*E. p. Dickenson*; *in re Clark*, 70 L.T. 284.

**Bill of Sale:—**

- (i.) **C. A.**—*Construction of Covenants—Payment of Interest—Production of Receipt for Rent, &c.*—*Bills of Sale Act, 1882, s. 7.*—A bill of sale contained a covenant to repay the money lent by equal yearly instalments, and a covenant to pay interest on the "said sum" at a given rate. It also contained a covenant to produce on demand the last receipt for rent, rates, and taxes, followed by a proviso that the chattels should not be liable to seizure for any cause other than those specified in the section above-mentioned, which were set out in the deed. *Held*, that the covenant to pay interest must be construed to refer to interest on the principal sum due from time to time. *Held*, also that the covenant to produce receipts must be read with the qualification that the goods could only be seized if the failure to produce the receipts should be without reasonable cause.—*Wardale Coal and Iron Co. v. Hodson*, L.R. [1894] 1 Q.B. 598.
- (ii.) **C. A.**—*Defeasance on Condition—Collateral Security—Bills of Sale Acts, 1878, s. 10, sub-s. 3; 1882, s. 8.*—A. and his wife assigned chattels to B. to secure payment of £300 with simple interest. On the same day and as part of the same transaction, A.'s wife assigned to B., by way of mortgage, certain reversionary interests to secure £300 with compound interest. *Held*, that the mortgage operated as a defeasance, and not being incorporated with the bill of sale rendered it void.—*Edwards v. Marcus*, L.R. [1894] 1 Q.B. 587; 70 L.T. 182.
- (iii.) **Ch. D.**—*Description of Grantor.*—A person leading the ordinary life of a country gentleman, but being a "sleeping" partner in several businesses, described himself in a bill of sale as "a gentleman of no occupation." *Held*, that the description was correct, and the bill of sale good.—*Feast v. Robinson*, 70 L.T. 168.
- (iv.) **Ch. D.**—*Mortgage of Land and Machinery*—Freehold and leasehold hereditaments were mortgaged by deed, together with all the fixed and movable plant, machinery, fixtures, implements, and utensils then and thereafter on or about the premises. The deed contained a covenant by the mortgagor to keep the buildings insured, and also the plant and machinery. *Held*, that as the deed was not registered as a bill of sale, it was void as to the machinery, and that the mortgagee could not sell the machinery either together with or apart from the land.—*Small v. National Provincial Bank of England*, 42 W.R. 378.
- (v.) **Q. B. D.**—*Weekly Instalments—Statutory Form.*—A bill of sale for £200 and interest at 6d. per pound per month, provided for the payment of principal and interest by weekly payments of £2 6s. 2d. There was no default clause. *Held*, that the bill of sale was not invalid for want of compliance with the statutory form, although the number of weekly instalments was not specified.—*Hastuck v. London and Westminster Loan and Discount Co.*, 63 L.J. Q.B. 209.
- (vi.) **Q. B. D.**—*Payment by Instalments—Default—Power to Seize—Bills of Sale Act, 1882, s. 7.*—A bill of sale made the amount secured, with interest, payable by instalments, but did not provide for the seizure of the whole of the goods on default in payment of one instalment. An instalment being in arrear, the grantee, after demand of payment, seized the whole of the goods. A receiving order was subsequently made. *Held*, that the grantee was entitled to possession of the goods on default in payment of one instalment, and that the seizure was rightful.—*E. p. Woolfe; re Wood*, L.R. [1894] 1 Q.B. 605; 70 L.T. 282.
- (vii.) **C. A.**—*Term for Maintenance of Security—Covenant to Replace Chattels Worn Out—Bills of Sale Act, 1882, ss. 4, 6, 9.*—A covenant in a bill of sale of furniture which is specifically described in a schedule, to the

effect that the grantor would replace articles damaged or worn out with others of equal value to be included in the security, is a term "for the maintenance of the security," and is not a deviation from the statutory form.—*Seed v. Bradley*, L.R. [1894] 1 Q.B. 319; 70 L.T. 214; 42 W.R. 257.

See *Bankruptcy*, p. 73, i.

### Boiler:—

- (i.) **Q. B. D.**—"*Used Exclusively for Domestic Purposes*"—*Boiler Explosions Acts, 1882, s. 4; 1890, s. 2.*—A boiler used to heat offices or business premises upon which the owner does not reside, and also to supply hot water for cleaning the offices and for the household purposes of a resident caretaker, is exempted from the operation of the Acts above-mentioned.—*Smith v. Muller*, L.R. [1894] 1 Q.B. 192; 70 L.T. 170.

### Building Society:

- (ii.) **Ch. D.**—*Dissolution—Priority.*—The rules of a building society fixed the amount of each share at £12, and provided for the withdrawal of unadvanced members on notice. In consequence of losses the rules were altered and the shares reduced to £10. A deed of dissolution was afterwards executed and registered. *Held*, that unadvanced members were bound by the rules from time to time, and therefore by the reduction of the shares, but that members who had given notice to withdraw, and whose notices had matured before the date of the deed of dissolution, were entitled to be paid in priority according to the dates of their notices.—*Barnard v. Tomlinson*, L.R. [1894] 1 Ch. 375; 70 L.T. 306.

- (iii.) **C. A.**—*Withdrawal of Deposits—Available Balance Insufficient—Action.*—The rules of a building society provided that if the available balance in hand should be insufficient to pay all depositors wishing to withdraw, they should be paid in rotation according to the priority of their notices. A depositor gave notice of withdrawing, and the available balance was insufficient to pay him, but he brought an action against the society, alleging that the fact that the society had given notice, and the balance being insufficient to pay him, was an answer to the action. *Held*, that the action was an answer to the action. *Brett v. Monarch Building Society*, L.R. [1894] 1 Q.B. 367; 70 L.T. 287; 42 W.R. 209.

- (iv.) **Q. B. D.**—*Winding-up—Compulsory Reference—City of London Court—Building Societies Act, 1874.*—In the winding-up of a building society under the Act, the judge of the City of London Court, without the consent and against the wishes of the parties to the application, referred an issue to a layman, imposed terms as a condition precedent to the hearing of such reference, and subsequently discharged his own order of reference owing to the refusal of either party to comply with the terms. *Held*, that as the judge had no power to order a reference except by consent, and as he could not of his own motion vary or discharge a final order of his own, he had acted in excess of jurisdiction, and that a writ of prohibition ought to issue.—*In re London Scottish Permanent Building Society*, 63 L.J. Q.B. 112.

### Burial Ground:—

- (v.) **C. A.**—*Disused—Building on—Metropolitan Open Spaces Act, 1881, s. 1—Open Spaces Act, 1887, s. 4—Disused Burial Grounds Act, 1884, s. 3.*—Decision of Ch. D. (see Vol. 10, p. 35, iv.) affirmed.—*Ponsford v. Newport District School Board*, L.R. [1894] 1 Ch. 454; 42 W.R. 358.

**Charity :—**

- (i.) **C. A.**—*Gift to Foreign Objects—Public Policy.*—A charitable bequest of a discretionary private nature in favour of the deserving poor persons of a foreign town, which can be carried out according to the law of the country in which such town is situated, is not void on the ground of public policy, nor is it contrary to the Mortmain and Charitable Uses Act, 1888.—*Freund v. Steward*, 69 L.T. 819.
- (ii.) **Ch. D.**—*Mortmain—Corporation Stock.*—Debenture stock issued by a municipal corporation was charged upon the borough fund and "the revenues derived from all the landed property" of the corporation. *Held*, that it was pure personalty, and might be bequeathed to a charity.—*Emsley v. Mitchell*, 63 L.J. Ch. 254; 42 W.R. 375.

**Colonial Law :—**

- (iii.) **P. C.**—*Ontario—Warehouse Receipts—Negotiable Instrument.*—Warehouse receipts given by a person who is not, from the nature of his business, a custodian for others as well as himself, are not negotiable instruments within the Mercantile Amendment Act of Ontario. For the purposes of the Canadian Bank Act, warehouse receipts given by a saw miller, although his business may be confined to the manufacture of his own timber, are negotiable. The British North America Act, 1867, gives the Parliament of Canada exclusive legislative authority over "banking;" and gives the Provincial Legislature exclusive authority with respect to "property and civil rights in the province." *Held*, that "banking" includes every transaction coming within the legitimate business of a banker, and that the provisions of the Bank Act dealing with the hypothecation of warehouse receipts, were not *ultra vires* the Dominion Parliament.—*Tennant v. Union Bank of Canada*, L.R. [1894] A.C. 31; 69 L.T. 774.
- (iv.) **P. C.**—*Cyprus—Legitimacy.*—The legitimacy of a Christian Ottoman subject in Cyprus is to be ascertained by the Christian, and not by the Mahomedan law.—*Parapano v. Hap paz*, 70 L.T. 254.
- (v.) **P. C.**—*Queensland—Dividend Duty Act, 1890, s. 8—Assets in Queensland—Mortgage Securities.*—Advances made by a company outside the colony on the security of real and personal property within the colony, *held*, to be assets in Queensland within the meaning of the Act, though the debtors did not reside in the colony, and neither principal nor interest was payable in it.—*Walsh v. The Queen*, 70 L.T. 257.  
*See Bankruptcy*, p. 71, iv.

**Company :—**

- (vi.) **Ch. D.**—*Alteration of Articles—Reserve Capital—Companies Acts, 1862, ss. 16, 50; 1879, s. 5.*—A company cannot contract itself out of the power to alter the articles. One of the articles of a company provided that £4 per share should be reserve capital not to be called up except in case of a winding-up, and that a special resolution to that effect should be passed. No valid special resolution to this effect was passed, and ultimately the article was repealed by a special resolution. *Held*, that this was valid.—*Mallison v. National Insurance and Guarantee Corporation*, L.R. [1894] 1 Ch. 200; 70 L.T. 157; 42 W.R. 249.
- (vii.) **Ch. D.**—*Director—Contract—Declaration of Interest—Penalty—Notice.*—The articles of a company provided that the office of any director should be vacated if he was interested in any contract with the company, without declaring his interest. The plaintiff was a director, and at a board meeting he informed the chairman, before the commencement of business, that he was "jointly interested" with M. in



a contract concerning which there was a question for discussion, but he did not specify the nature of his interest. The plaintiff took no part in the business, and was recorded in the minutes as "neutral." At a meeting of the board, of which no notice was given to the plaintiff, his seat as a director was declared vacant. *Held*, that the plaintiff ought to have declared the nature of his interest in the contract, and that he had not satisfied the requirements of the articles; but that he ought to have had an opportunity of justifying himself. Injunction granted to restrain the company from interfering with the plaintiff in the discharge of his duties as a director.—*Turnbull v. West Riding Athletic Club*, 70 L.T. 92.

- (i.) **Ch. D.—Director—Qualification Shares—Implied Contract to Take.**—The articles of a company provided that the first directors might act before acquiring their qualification shares, but that unless they acquired them within one month from their appointment, they should be deemed to have agreed to take the same, and that the same should be allotted to them. R. was named as one of the first directors. The company was incorporated in July, 1891. On the 21st July, 1891, R. wrote to the company's engineer a letter in which he referred to his having signed the articles and to a prospectus in which his name appeared as a director. On the 8th September, 1891, he wrote resigning his place on the board. The directors accepted his resignation, but allotted to him his qualification shares. R. never attended any board meeting, or otherwise acted as a director. *Held*, that the fact that R. had authorised the company by the letter of the 21st July to hold him out to the world as a director, and that he had allowed himself to be named as a first director, was evidence that he had agreed to take the shares, that the letter of resignation confirmed such evidence, and that his name ought to be on the list of contributories.—*In re Hercynia Copper Co.*; *e. p. Richardson*, 70 L.T. 236.
- (ii.) **Ch. D.—Director—Qualification—Estoppel.**—The articles of a company provided that the first directors should have one month from the first general allotment of shares to acquire their qualification; and that a director should vacate his office if he ceased to hold the qualification shares, or in the case of a first director, failed to acquire them within the month. C., a first director, had signed the memorandum for one share, but never applied for his qualification shares. His qualification shares were allotted to him and registered in his name at the first general allotment without his knowledge. When he became aware of the allotment he requested that his name might be removed from the register, and the day after the expiration of the month, sent in his resignation, and did not afterwards act as a director. *Held*, that he could not be fixed with constructive notice of the fact that his name was on the register, that he was not estopped from denying that he had applied for shares, and that he was entitled to be removed from the register.—*E. p. Cannell*; *in re Printing, &c., Co. of the Havas Agency*, L.R. [1894] 1 Ch. 528; 63 L.J. Ch. 214; 70 L.T. 74.
- (iii.) **C. A.—Directors—Trustees—Limitations.**—The directors of a company had acted *ultra vires*, but not fraudulently, in the investment of funds of the company. More than six years afterwards the liquidator of the company applied for a declaration that they had committed a breach of trust, and were liable for the misapplication of the funds. *Held*, that the directors as trustees were protected by the Trustee Act, 1888, sect. 8, the misapplication not being fraudulent. A director who is not a party to a misapplication of the company's funds cannot be made liable for not taking proceedings to upset the transaction after it is concluded.—*In re The Lands Allotment Co.*, 70 L.T. 286; 42 W.R. 404.

- (i.) **C. A.**—*Sale of Undertaking—Call—Death of Shareholder—Executors—Notice.*—A company had power to sell its undertaking. It sold its undertaking to another company, and, in accordance with the terms of sale, called up the uncalled capital and paid it to the purchasing company. *Held*, that the call was not *ultra vires*. The articles provided for notice of calls to be made by letter sent to the registered addresses of shareholders. *Held*, that a letter duly posted to a shareholder at his registered address was good, although the shareholder was dead, and the notice never reached the executors, the death of the shareholder not having been notified to the company.—*New Zealand Gold Extraction Co. v. Peacock*, L.R. [1894] 1 Q.B. 622; 63 L.J. Q.B. 227; 70 L.T. 110.
- (ii.) **Q. B. D.**—*Transfer—Estoppel.*—The plaintiff, the holder of shares in the defendant company, bought other shares and took a transfer *bona fide*, but did not obtain a certificate of registration. The transfer was forged by the secretary. The plaintiff received two dividend warrants in respect of the total number of shares. The company afterwards refused to recognise his title to the newly acquired shares. *Held*, that the payment of the dividends did not estop the company from denying the plaintiff's title, and that the company was entitled to the return of the dividend paid by mistake.—*Foster v. Tyne Pontoon and Dry Docks Co.*, 63 L.J. Q.B. 50.
- (iii.) **C. A.**—*Winding-up—Distribution of Surplus Assets—Companies' Act, 1862, s. 133.*—The articles of association of a company, which was in voluntary liquidation, provided that in case of a winding-up, if the surplus assets should be insufficient to repay the whole of the paid-up capital, such surplus should be applied, first, in repaying to the preference shareholders *pro rata* the amount paid up on the preference shares held by them at the commencement of the winding-up, so far as such surplus assets should extend, and that the balance of such surplus (if any) should be distributed amongst the ordinary shareholders. *Held*, that the "surplus assets" included capital not called up at the commencement of the winding-up; and that for the purpose of adjusting the rights of preference shareholders *inter se*, the liquidator ought to call up the balance uncalled up on such of the preference shares as had not been fully paid up.—*In re Sheppard's Corn Malting Co.*; *e. p. Lowenfeld*, 70 L.T. 3.
- (iv.) **Ch. D.**—*Winding-up—Foreign Action—Injunction—Companies Act, 1862, s. 163.*—In the winding-up of an English company whose assets were in Brazil, a part-performed contract for the sale of the Brazilian assets was agreed to be sold for £36,000. An English creditor laid an embargo on the Brazilian assets, by levying execution on a judgment of the Brazilian Court, and thereby prevented payment of the £36,000. He was ordered to remove the embargo on terms of a sum being placed to a separate account to meet any claim which he might establish.—*In re Central Sugar Factories of Brazil, Flack's Case*, L.R. [1894] 1 Ch. 369; 42 W.R. 345.
- (v.) **Ch. D.**—*Winding-up—Voluntary and under Supervision.*—Sect. 15 of the Companies (Winding-up) Act, 1890, applies to voluntary liquidations and to liquidations continued under supervision, as well as to compulsory liquidations.—*In re Stock and Share Auction and Banking Co.*; *in re Spiral Woodcutting Co.*; *in re Hull Land and Property Investment Co.*, 63 L.J. Ch. 245; 70 L.T. 235; 42 W.R. 300.
- (vi.) **C. A.**—*Winding-Up—Debenture-Holders' Action—Receiver—Official Receiver.*—Where there are pending a debenture-holders' action and also a winding-up by the Court, it is proper, in general, that the official receiver should be appointed receiver for the debenture-

holders. But when some of the assets contained in the debenture-holders' security were of a special nature, *held*, that the receiver approved of by them should be appointed to get in such assets, the official receiver being appointed receiver of all the other assets.—*British Linen Co. v. South American and Mexican Co.*, L.R. [1894] 1 Ch. 108.

- (i.) **Ch. D.**—*Winding-up Proceedings—Injunction to Restrain*.—The defendants, the solicitors of the plaintiff company, gave the company formal notice demanding payment of certain promotion expenses, and stating "This demand is in compliance with the provisions of the Companies Acts." The company believed that the defendants were about to commence winding-up proceedings, and sued for an injunction. *Held*, that there was jurisdiction to restrain the presentation of a winding-up petition; and that in this case, as it appeared that the debt, if any existed, was not presently payable, an injunction ought to be granted.—*New Travellers' Chambers v. Cheese & Green*, 70 L.T. 271.

### Compulsory Purchase:—

- (ii.) **C. A.**—*Public Body—Special Act—Payment in—Costs—Jurisdiction—Supreme Court of Judicature Act, 1890, s. 5*.—Decision of Ch. D. (*see* Vol. 19, p. 39, i.) affirmed.—*In re Fisher*, 63 L.J. Ch. 235; 70 L.T. 62; 42 W.R. 241.

### Contempt of Court:—

- (iii.) **Ch. D.**—*Trade-Mark Case—Circular*.—Pending an action for infringement of a trade-mark the plaintiff may warn the trade by circular; but to introduce discussion of the merits of the action is a contempt of Court.—*J. & P. Coats v. Chadwick*, L.R. [1894] 1 Ch. 347; 70 L.T. 228; 42 W.R. 328.

### Copyhold:—

- (iv.) **Q. B. D.**—*Seizure Quousque—Lapse of Time—Implied Admittance—Limitations*.—Where, after the death of the last tenant, the lord has for upwards of twenty years collected quit rents from the devisees or customary heirs, and has neglected to make the customary death proclamations, or to give notice to the devisees or customary heir to take admittance and pay the fine, such an admittance of the devisees or customary heir will be implied as will bar the lord's right to seize *quousque*. Further, such right is barred by the statutes of limitations.—*Ecclesiastical Commissioners v. Parr*, 63 L.J. Q.B. 115; 70 L.T. 170.

### Costs:—

- (v.) **Ch. D.**—*Interlocutory Order—Interest—Judgments Act, 1838, ss. 17, 18, 20 R. S. C., 1883, O. xlii., r. 14, 16*.—When an interlocutory order directs payment of costs by A. to B., interest on the costs thereby awarded is payable as from the date of the order.—*Taylor v. Roe*, L.R. [1894] 1 Ch. 413; 70 L.T. 232.

### County Court:—

- (vi.) **Q. B. D.**—*Appeal—Death of Parties—Jurisdiction to add Personal Representatives*.—Where, pending an appeal from a county court, one of the parties dies, the High Court has jurisdiction to give leave to add the personal representatives of such party, and no application need be made to the county court.—*Blakeway v. Patteshall*, L.R. [1894] 1 Q.B. 247.

- (i.) **C. A.**—*Practice—Jurisdiction of Registrar—Non-appearance of Defendant—Counter-claim—County Courts Act, 1888, s. 90—County Court Rules, 1889, O. xxii., r. 6*—In an action on a solicitor's bill, commenced by default summons in a county court, the defendant gave notice of defence and of a counter-claim for negligence. The case was called on during vacation, when the judge was not sitting. The defendant did not appear. The registrar gave judgment for the plaintiff, without any proof of the debt other than the affidavit filed with the summons, and struck out the counter-claim. On application for prohibition. *Held*, that even if the registrar was wrong in giving judgment without further proof, and had no jurisdiction to strike out the counter-claim, there was no ground for prohibition.—*Hooper v. Hill*, L.R. [1894] 1 Q.B. 659; 70 L.T. 224; 42 W.R. 394.
- (ii.) **C. A.**—*Practice—Default Summons—Out of Jurisdiction—Affidavit—County Courts Act, 1888, s. 74, 86—County Court Rules, 1889, O. v., rr. 9a, 10, Appendix, Form 14a*—Where the claim in a county court action exceeds £5, and the plaintiff asks leave for the issue of a default summons out of the jurisdiction, it is not required of him to swear that the defendant is not of any of the occupations or descriptions specified in the order above-mentioned.—*Gordon v. Evans*, L.R. [1894] 1 Q.B. 248; 70 L.T. 70.
- (iii.) **Q. B. D.**—*Jurisdiction—Winding up of Company—Writ of *fi. fa.*—Officers of Court—Companies Act, 1890, s. 1—Rules under Act, r. 20*—A company was being wound up under the Act by a county court, and the judge ordered a writ of *fi. fa.* to issue, addressed to the sheriff, against a debtor to the company. *Held*, that the writ was bad, and that where a county court has the powers of the High Court, it must use its own officers.—*In re Bassett's Plaster Co.*, 42 W.R. 410.
- (iv.) **C. A.**—*Prohibition—Want of Jurisdiction Apparent—Acquiescence*—A lease of a farm provided for compensation to the tenant for certain matters outside the Agricultural Holdings Act, 1883, and also that sects. 7 to 28 of the Act should apply to claims under the lease as well as under the Act. An award was made by an umpire, on the face of which it appeared that compensation was made for matters outside the Act, and an appeal therefrom was heard by the county court judge. The High Court made an order, which, as the tenant alleged, was made with consent, that the case be remitted to the county court. The county court judge held the award to be good, and made an order under sect. 24 of the Act enforcing the award. *Held*, that as the want of jurisdiction was apparent on the face of the proceedings, the landlord, notwithstanding any acquiescence on his part to the exercise of jurisdiction, was entitled to a writ of prohibition restraining the county court from enforcing that part of the award which allowed compensation for matters outside the Act.—*Farquharson v. Morgan*, L.R. [1894] 1 Q.B. 552; 70 L.T. 152; 42 W.R. 306.

### Covenant :—

- (v.) **C. A.**—*Fixtures—Operative Machinery*—The defendant was bound by covenant that no "operative machinery" should be fixed or fastened upon certain land, and that "no hut, tent, shed, caravan, house on wheels, or other chattel" should be erected or placed thereon. *Held*, that a switchback railway was "operative machinery" and also a "chattel" within the meaning of the covenant.—*Chamberlayne v. Collins*, 70 L.T. 217.

### Criminal Law :—

- (vi.) **C. C. R.**—*Embezzlement—Clerk or Servant—Director of Company in Service of Company—24 & 25 Vict., c. 96, s. 68*—Where a member and

director of a company is employed by the company at a salary, his position as director does not prevent his being also a servant, and he may be convicted of embezzling the moneys of the company.—*Reg. v. Stuart*, L.R. [1894] 1 Q.B. 310; 63 L.J. M.C. 63; 70 L.T. 44; 42 W.R. 303.

- (i.) **P. C.**—*Evidence—Admissibility—Criminal Law Amendment Act of New South Wales*, s. 423.—The appellants were indicted for the murder of an infant whom they had taken in to nurse upon payment of a small sum, alleging that they intended to adopt it. *Held*, that evidence that several other infants had been received by the appellants on like representations, and upon payment of sums inadequate to pay for their support for more than a short time, and that bodies of infants had been found buried in the gardens of houses occupied by the appellants, was admissible. When material evidence has been improperly admitted the statute above mentioned does not empower the Court to affirm a conviction upon the ground that there was sufficient evidence to support it without such improperly admitted evidence, unless such evidence was directed to some merely formal matter.—*Mahin v. Attorney-General for New South Wales*, L.R. [1894] A.C. 57; 69 L.T. 778.
- (ii.) **Q. B. D.**—*Extradition—Theft—Stolen Property Produced by Purchaser—Detention—Extradition Act*, 1870, s. 9.—Upon the hearing by a magistrate of an application for the extradition of a person charged with a theft committed in France, the purchaser of the property alleged to be stolen produced it under a *subpoena duces tecum*. The magistrate having committed the accused to await an extradition warrant, orally directed a constable to take charge of the property, that it might be produced at the trial in France. The purchaser applied for an order under 11 & 12 Vict., c. 44, s. 5, that the property might be delivered to him. *Held*, that the magistrate was *functus officio* as soon as he had made the order for committal, and that any subsequent direction as to the property was not an act relating to the duties of his office; and that the Court had no jurisdiction to make the order. *Held*, also, that, assuming there was jurisdiction, the purchaser's possessory title was diverted by the property passing out of his possession under the *subpoena duces tecum*, and that he was not entitled to the relief asked.—*Reg. v. Lushington*, L.R. [1894] 1 Q.B. 420; 42 W.R. 411.
- (iii.) **C. C. R.**—*Indictment—Property—Illegal Association—Embezzlement of Moneys*.—The members of an unregistered club, having for its object the acquisition of gain by such members, which is illegal owing to non-compliance with sect. 4 of the Companies Act, 1862, are the beneficial owners of the property of the club. It is therefore right in an indictment against the treasurer of the club for stealing or embezzling moneys paid to him on behalf of the club, to lay the property in the moneys in the individual members of the club as beneficial owners.—*Reg. v. Tankard*, L.R. [1894] 1 Q.B. 548; 63 L.J. M.C. 61; 70 L.T. 42; 42 W.R. 350.
- (iv.) **Q. B. D.**—*Lottery—Aiding and Abetting*.—The appellant was convicted of aiding, abetting, counselling, and procuring the keeping of a lottery. The lottery was carried on by the sale of sweetmeats, a certain number of which contained coins. The appellant supplied such sweetmeats wholesale, knowing the purpose for which they were to be used, and was proved to have urged on a retail dealer the purchase of his sweetmeats on the ground that they contained more money prizes than those sold elsewhere. *Held*, that the conviction was right, and that the evidence that the appellant incited the retail dealer in such illegal dealing was evidence to support it.—*Barratt v. Burden*, 63 L.J. M.C. 83.

- (i.) **C. C. R.**—*Offense against Criminal Law Amendment Act, 1885—Aiding and Abetting—Soliciting—Girl under Sixteen.*—A girl under sixteen cannot be convicted of aiding and abetting the commission upon herself of an offence against the Criminal Law Amendment Act, 1885, nor of soliciting and inciting a male person to commit such an offence upon her.—*Reg. v. Tyrell*, 63 L.J. M.C. 58, 70 L.T. 41; 42 W.R. 254.

**Damages :—**

- (ii.) **C. A.**—*Assessment to Time of Assessment—Continuing Cause of Action—R. S. C., 1883, O. xxxvi., r. 58.*—"A continuing cause of action" within the meaning of the rule, is a cause of action arising from the repetition of acts or omissions similar to those in respect of which the action was brought. The plaintiffs obtained judgment for an injunction and damages against the defendants for allowing sewage to pollute the plaintiffs' stream. The pollution continued, and three years after judgment the chief clerk assessed the damages, carrying the assessment down to the date of his certificate. *Held*, that there was "a continuing cause of action," and that the damages were rightly assessed down to the time of the assessment.—*Hole v. Chard Union*, L.R. [1894] 1 Ch. 293; 70 L.T. 52.

**Deed :—**

- (iii.) **Ch. D.**—*Construction—Words of Limitation.*—An equitable estate in fee cannot be formally limited by deed without words of inheritance or their statutory equivalent.—*Lovatt v. Whigton*, 42 W.R. 327.

**Distress :—**

- (iv.) **Q. B. D.**—*Damage Feasant.*—Trespassing animals may be distrained damage feasant, not only when damage is done to the freehold, but also when it is done to other animals.—*Boden v. Roscoe*, L.R. [1894] 1 Q.B. 608.

**Easement :—**

- (v.) **C. A.**—*Light—Injunction or Damages—Future Injury—Lord Cairns' Act, s. 2—Special Circumstances.*—See Vol. 19, p. 41, ni. *Held*, by C. A. that as the plaintiff had proved his legal right to the light, and that the proposed building would infringe that right, and there being no special circumstance disentitling him to relief, he was entitled to an injunction as to the threatened building, and to damages as to the completed building. *Quare*, whether the Court can give damages instead of an injunction in respect of threatened injury.—*Martin v. Price*, L.R. [1894] 1 Ch. 276; 63 L.J. Ch. 209; 70 L.T. 202; 42 W.R. 262.

**Ecclesiastical Law :—**

- (vi.) **Consistory Court of Chester.**—The Ordinary ought not in his discretion to sanction the introduction into a church of an inscription asking for prayers for the soul of a deceased person.—*Egerton v. All of Odd Rode*, L.R. [1894] P. 15.

**Estoppel :—**

- (vii.) **Q. B. D.**—*Gavelkind—Lease by Coparcener—Tenant estopped from denying Title of Heir of Grantor—Deduction of Title.*—H., J., and M., three brothers, were entitled to land as coparceners in gavelkind. H. made a lease of the whole to X., who entered and paid rent for the whole to H., up to the latter's death. J. being also dead, M. claimed the land as heir-at-law of his brothers. X., except as to H.'s third,

set up the Statute of Limitations. *Held*, that X. would have been estopped from denying the title of H. to the whole of the land, and was equally estopped from denying the title of M., the heir and privy in blood of H. *Held*, also, that the mode of finding a privy in blood is not affected by 3 and 4 Will. IV., c. 106, which makes descent traceable from the last purchaser.—*Weeks v. Bich*, 69 L.T. 759.

- (i.) **Ch. D.—*Matter of Record*.**—The A. company, owners of land, borrowed money on debentures secured by a trust deed, which gave meetings of debenture-holders powers of compromise of claims against the company. The E. company bought the land, and covenanted to indemnify the A. company. Meetings of debenture-holders agreed by special resolutions to compromise their claims. Certain dissentients obtained a decision that the resolutions were invalid, and afterwards sued the E. company. *Held*, that the E. company were not estopped by the previous judgment from showing that the resolutions were valid, for they were not parties to the previous action, and their covenant to indemnify the A. company did not put them in the position of defendants thereto; also, that they were not “privies in estate” of the A. company, as the previous judgment could not bind the land, and a purchaser of land cannot be estopped, as privy in estate, by a judgment against the vendor in an action brought after the purchase; and that, though the E. company would have been estopped from disputing the judgment in an action by the A. company suing them on their covenant for indemnity, it was not so in this action brought on totally different grounds to which the A. company were not parties; and therefore that the E. company could shew that the resolutions were valid to bind the dissenting minority.—*Mercantile Investment and General Trust Co. v. River Plate Trust Loan and Agency Co.*, L.R. [1894] 1 Ch. 578; 70 L.T. 131; 42 W.R. 365.

*See Practice*, p. 96, iii.

### Gaming :—

- (ii.) **Q. B. D.—*Agent Employed to Make Bets—Action for Money had and received*.**—*Gaming Act*, 1892, s. 1.—A. employed B. as his agent to make bets, and B. received from the persons with whom he had betted the amounts of the bets won. *Held*, that A. could maintain an action to recover the amounts so received by B.—*De Mattos v. Benjamin*, 63 L.J. Q.B. 248; 49 W.R. 284.
- (iii.) **Q. B. D.—*Act for the Suppression of Betting Houses***, 1853, ss. 1, 3.—To open or keep a house or other place for the purpose of betting with persons resorting thereto is an offence against the Act above-mentioned.—*Bond v. Plumb*, L.R. [1894] 1 Q.B. 169; 42 W.R. 222.

### Goodwill :—

- (iv.) **Ch. D.—*Trade Name—Business—Assignment*.**—John Forrest, a watchmaker in London, used to mark his goods “John Forrest, London.” After his death in 1871, his administratrix sold his business and goodwill to C., a watchmaker in London. In 1874 C. granted to S., a watchmaker in Liverpool, the sole right for seven years to put the name “John Forrest, London” on his goods. After the expiration of the licence C. put the said name on very few, if any, of his goods. In 1890 he assigned his estate for the benefit of creditors, and the trustee sold the business to X., who carried it on; and at the same time the trustee purported to assign to T., a watchmaker in Coventry, “the name, title, and goodwill of John Forrest, London.” T. attempted to restrain another watchmaker from using the name on his goods. *Held*, that the action would not lie, for, assuming that C. acquired the

right to use the name in 1871, he had lost it under the licence to S., and had never regained it. *Held*, also, that even if anything had been assigned to T. by the trustee, it was a mere right to use the name unconnected with any business, and being an assignment in gross, was invalid.—*Thorneloe v. Hill*, L.R. [1894] 1 Ch. 569; 70 L.T. 124; 42 W.R. 397.

### Husband and Wife :—

- (i.) **C. A.**—*Contract—Promise to Leave Property by Will—Breach of.*—A marriage took place on the faith of a written promise by the husband to the wife that he would leave her certain real property for life. After the marriage he conveyed the property to a third person. *Held*, that there was a contract binding on the husband to leave the property to the wife, and that she was entitled to treat the conveyance as a breach of the contract, and to sue for damages.—*Syngé v. Syngé*, L.R. [1894] 1 Q.B. 466; 63 L.J. Q.B. 202; 70 L.T. 221, 42 W.R. 309.
- (ii.) **C. A.**—*Malins' Act—Instrument "made after 31st December, 1857"—Will Republished.*—By will dated in 1856 residuary estate was given in trust for Mrs. W. for life, and after her death for her children. There was a direction that the "several pecuniary legacies" bequeathed to married women should be for their separate use. After the 31st of December, 1857, the testatrix executed a codicil adding to the pecuniary legacies. She died in 1868. In 1868 one of the daughters of Mrs. W., with the concurrence of her husband, by deed acknowledged, assigned her share of the residue. *Held*, that she did not become "entitled under an instrument made after the 31st of December, 1857," as she derived title under the will, and the will and codicil could not for that purpose be treated as one instrument; *held*, also, that her share of the residue did not come within the words "pecuniary legacies," and was not given to her separate use. *Held*, therefore, that it did not pass by the assignment.—*Laybourn v. Grover Wright*, L.R. [1894] 1 Ch. 303; 70 L.T. 54; 42 W.R. 279.
- (iii.) **C. A.**—*Divorce—Alimony Release—Consideration*—The payment of a sum less than the arrears of alimony is not a sufficient consideration to support a promise to release arrears, and future payments.—*Underwood v. Underwood*, 42 W.R. 372.
- (iv.) **P. D.**—*Divorce—Discretionary Bar—Adultery of Wife—Cruelty of Husband—Maintenance.*—In a suit by the husband the jury found the wife guilty of adultery and the husband of cruelty, but they were not asked to give, and did not give, any verdict whether the cruelty of the husband had conduced to the adultery of the wife. The Court, being satisfied that the adultery had not been brought about by the cruelty of the petitioner, pronounced a decree nisi, but directed that it should not be made absolute until the petitioner had secured to the respondent maintenance *dum sola et casta vixerit*—*Edwards v. Edwards*, L.R. [1894] P. 83; 63 L.J. P. 62; 70 L.T. 89.
- (v.) **P. D.**—*Divorce—Maintenance—Income of Respondent.*—On a petition for maintenance by a wife, who had obtained a decree for divorce, it appeared that the husband's income was derived from a business in which he was partner. *Held*, that he must secure maintenance for his wife upon the basis of one-third of the whole of his share of the average profits to which he had been entitled during the three preceding years, although by the partnership articles he was only entitled to draw a limited amount of the profits, unless with the consent of his partner.—*Hanbury v. Hanbury*, L.R. [1894] P. 102.



- (i.) **C. A.**—*Divorce—Pleadings—Wife's Answer—Striking out.*—The wife, respondent in divorce proceedings, alleged in her answer as conduct of her husband conducing to her alleged adultery, certain flirtations and familiarities with other women. *Held*, that, though the allegations did not constitute a strong charge it was not impossible that the judge might consider that if the alleged facts were proved, the husband had by his neglect conduced to the wife's adultery, and therefore that the allegations ought not be struck out.—*Cox v. Cox*, 70 L.T. 200.
- (ii.) **P. D.**—*Divorce—Practice—Intervention of Queen's Proctor—Leave to Add Charge of Adultery—Intervention of Person with whom Adultery Charged.*—Where the Queen's Proctor intervened after decree nisi, and in the course of the trial, leave was given to add to his previous pleas a charge of adultery committed with L., a motion by L. for leave to intervene was refused.—*Carew v. Carew*, L.R. [1894] P. 31.
- (iii.) **C. A. & P. D.**—*Divorce—Wife's Costs Pendente Lite.*—On an application by a wife, *pendente lite*, that the husband may be ordered to pay her costs already incurred, and give security for her future costs, the judge has a discretion, and may take into account the relative income of the husband and wife, and is not bound to refuse the application because the wife has separate property the amount of which is much more than is sufficient for the payment of her costs.—*Allen v. Allen*, L.R. [1894] P. 134; 42 W.R. 230.

#### Infant:—

- (iv.) **Ch. D.**—*Maintenance—Interest on Legacy—Conveyancing Act, 1881, s. 43.*—The income of a sum of stock specifically bequeathed in trust for an infant on the contingency of his attaining twenty-one, will, on his attaining that age, belong to him; and therefore it may be applied for his maintenance.—*Clements v. Pearsall*, 42 W.R. 374.

#### International Law:—

- (v.) **C. A.**—*Foreign Sovereign—Immunity—Submission to Jurisdiction—Proof of Independent Sovereignty.*—The Court will not entertain an action against an independent foreign sovereign unless he voluntarily submits himself in that particular action to the jurisdiction of the Court. Such a submission cannot be made until the Court is asked to exercise its jurisdiction, and therefore the Court will not consider his previous conduct as evidence of such submission having been made. A certificate from a responsible Minister of the Queen as to the relations between Her Majesty and a foreign sovereign is conclusive in Her Majesty's Courts.—*Mighell v. Sultan of Johore*, L.R. [1894] 1 Q.B. 149; 70 L.T. 64.

#### Interpleader:—

- (vi.) **Q. B. D.**—*Sheriff—Costs—R.S.C., 1883, O. lvi., rr. 15, 16, 17.*—After an interpleader order had been made as to goods in possession of the sheriff, the landlord claimed them for rent. The execution creditor declined to pay the rent, the goods were distrained, the issue was not tried. The sheriff applied for costs, to be paid by the execution creditor, and the execution creditor applied for costs against the claimant. *Held*, that the execution creditor should first pay the sheriff's costs, and that the claimant should pay him half the sheriff's costs from the date of the claim.—*Lawson v. Carter*, 68 L.J. Q.B. 159.
- (vii.) **C. A.**—*Deposit—Forfeiture—Second Seizure—Second Deposit—County Courts Act, 1888, s. 156.*—Decision of Q. B. D. (see Vol. 19, p. 46, ii.) affirmed.—*Haddow v. Morton*, L.R. [1894] 1 Q.B. 565.

**Joint Tenancy:—**

- (i.) **Ch. D.**—*Severance—Covenant to Settle.*—A covenant by an intended husband and wife to settle the wife's after-acquired property; *held*, to effect a severance of the wife's joint tenancy in personal estate created by a subsequent instrument.—*Hewett v. Hallett*, L.R. [1894] 1 Ch. 362; 63 L.J. Ch. 182; 42 W.R. 233.

**Justices:—**

- (ii.) **Q. B. D.**—*Procedure—Appeal—Recognisance—Time.*—Application to justices to state a case was made on the 21st September. The case was not stated till the 20th December, and the appellant did not enter into his recognisance till the 21st December. *Held*, that Rule 18 of the Rules of 1886 under the Summary Jurisdiction Act, 1879, had not been complied with.—*Walker v. Delacombe*, 63 L.J. M.C. 77.

**Landlord and Tenant:—**

- (iii.) **Q. B. D.**—*Covenant to Repair—Breach—Underlessee—Liability for Costs of Surveyor, &c.—Conveyancing Acts, 1881, s. 14, sub-ss. 1, 2; 1892, s. 2, sub-s. 1, s. 4.*—An underlessee of the whole of the premises contained in the head lease is included in the term lessee in the sections above-mentioned, and the lessor is entitled to recover from him the costs therein specified. A lessee who, in obedience to a notice from his lessor, remedies the breach of covenant specified and makes the compensation demanded, and thereby renders unnecessary an application to the Court for relief from forfeiture, "is relieved" under the provisions of the Act, within the meaning of sect. 2, sub-sect. 1, of the second Act above-mentioned.—*Nind v. Nineteenth Century Building Society*, L.R. [1894] 1 Q.B. 472; 63 L.J. Q.B. 106; 70 L.T. 316; 42 W.R. 349.
- (iv.) **Q. B. D.**—*Negligence—Weekly Tenancy—Liability of Reversioner—Notice.*—In an action for damages against the landlord of premises let on a weekly tenancy by a person who has been injured by an accident which took place on the premises, it is a question for the jury whether the accident was caused by a structural defect existing at the time of the original letting, or whether it was caused by the neglect of the tenant.—*Bowen v. Anderson*, L.R. [1894] 1 Q.B. 164; 42 W.R. 236.
- (v.) **Ch. D.**—*Notice—Telephone.*—The plaintiffs made a three years' agreement with the defendants for the hire of telephonic apparatus and wires at a rent payable quarterly. The agreement empowered the defendants to determine the agreement forthwith on non-payment of rent or breach of conditions. The tenancy was continued by mutual consent after the three years. Immediately prior to the expiration of a quarter the defendants gave notice to determine forthwith, and subsequently demanded and received rent for the whole quarter. *Held*, that they must be restrained from acting on their notice to determine.—*Keith, Prowse, and Co. v. National Telephone Co.*, 70 L.T. 276; 42 W.R. 380.

**Lands Clauses Act:—**

- (vi.) **Q. B. D.**—*Arbitration—Death of Umpire before Award—Costs—Sects. 23, 34.*—Under an application for compensation by a landowner against a railway company a statutory arbitration under two arbitrators and an umpire had been commenced. Subsequently, owing to the death of the umpire, the parties agreed to submit the arbitration to a sole arbitrator. Compensation exceeding the amount offered was awarded. *Held*, that the landowner was entitled to costs

from the initiation of the arbitration; that the substitution by agreement of a sole arbitrator in lieu of the umpire, did not put an end to the original submission; and that the provisions as to a jury in default of an award did not apply if the parties had agreed to an alternative arrangement.—*Reg. v. Mahley-Smith*, 63 L.J. Q.B. 171.

### Libel :—

- (i.) **C. A.—Company—Statements Affecting Business—Special Damage—Public Interest.**—A company has the same right of action in respect of a libel reflecting upon the conduct of its business as an individual has, and can maintain an action without proving special damage. The plaintiffs were a colliery company, and owned a number of cottages in a colliery village, which were occupied by their workmen. The defendants published an article, which was one of a series dealing with the condition of colliery villages, and which described the village as being in a most insanitary condition, and unfit for habitation. The village contained about 2,000 inhabitants, and was under a rural sanitary authority. *Held*, that the matter was one of public interest, upon which fair comment might be made.—*South Hetton Coal Co. v. North-Eastern News Association*, L.R. [1894] 1 Q.B. 133; 69 L.T. 844; 42 W.R. 322.
- (ii.) **C. A.—Privileged Communication—Solicitor Acting for Client.**—A solicitor acting for a client in the recovery of a debt due from the plaintiff, wrote to an auctioneer, who was about to sell the plaintiff's goods, stating that the plaintiff had committed an act of bankruptcy on which an order might be made against him in bankruptcy, and gave the auctioneer notice not to part with the proceeds of the sale. The plaintiff sued the solicitor for libel. *Held*, that as the occasion would have been privileged in the case of the client, it was equally so in the case of the solicitor, who was acting for the client in the course of his ordinary duty.—*Baker v. Carrick*, 42 W.R. 338.
- (iii.) **C. A.—Privilege—Letter by Solicitors on behalf of Client—Copy by Clerk.**—A firm of solicitors, being instructed by a client to obtain payment of a debt, wrote to the plaintiff erroneously believing him to be the person who owed the debt. The letter, which the plaintiff complained of as libellous, was written from dictation by a clerk, and a copy of it was made by another clerk. *Held*, that the communication of the letter to the clerks was privileged, it being written in the ordinary course of business, and the employment of clerks being necessary.—*Boxsius v. Goblet Frères*, 42 W.R. 392.

### Licensing :—

- (iv.) **Q. B. D.—Beerhouse—Renewal—New Occupier—Unlicensed Person—Wine and Beerhouse Act, 1869, s. 8—Licensing Act, 1872, s. 42.**—When the holder of the licence of a beerhouse which has been licensed before and ever since May, 1869, goes out of occupation, and the house is closed, the new occupier is entitled to apply for a renewal to him of the licence, although he was not himself licensed before.—*Symons v. Wedmore*, L.R. [1894] 1 Q.B. 401; 63 L.J. M.C. 44; 69 L.T. 801; 42 W.R. 301.
- (v.) **Q. B. D.—Grant of Publican's Licence—Former Conviction of Licensee—Jurisdiction—Beer House Act, 1840, s. 7—Wine (Refreshment) Act, 1860, s. 7—Licensing Act, 1872, s. 50—Inland Revenue Act, 1880, s. 43, sub-s. 2.**—An applicant for a full publican's licence had been convicted of selling spirits without a licence. The licensing justices, however, granted him authority to hold "any excise licences that may be held by a publican." He took out an excise spirit licence, under which he

might also sell beer or wine by retail. *Held*, that the justices had not exceeded their discretionary jurisdiction, as there was nothing in the Acts to disqualify the applicant from holding a spirit licence; but the Court expressed no opinion as to whether or not the licensee would expose himself to penalties by selling wine or beer.—*Reg. v. Roper*, 63 L.J. M.C. 68.

- (i.) **H. L.**—*Quarter Sessions Practice—Court Equally Divided—Alehouse Act, 1828, s. 9.*—Where, on an appeal from licensing justices, the Court of Quarter Sessions is equally divided, the decision appealed against must be affirmed.—*E. p. Evans*, L.R. [1894] A.C. 16; 70 L.T. 45.
- (ii.) **H. L.**—*Quarter Sessions Practice—Beerhouse—Grounds of Refusal—32 & 33 Vict., c. 27, s. 8.*—Where licensing justices refused an application for the renewal of a beerhouse licence, without specifying, as they were required to do, upon which of the grounds mentioned in the above-mentioned section they refused it, and the applicant appealed to Quarter Sessions; *held*, that he was not entitled to a renewal as a matter of course, but that the Court of Quarter Sessions could go into the merits of the case on the appeal, without further adjournment.—*E. p. Gorman*, L.R. [1894] A.C. 23; 70 L.T. 46.
- (iii.) **Q. B. D.**—*Offence—Permitting Drunkenness—Knowledge—Licensing Act, 1872, s. 13.*—A licensed person cannot be convicted of permitting drunkenness to take place on his premises, where the evidence shows that a person was in fact on the premises drunk, but the licensed person did not know that such person was drunk.—*Somerset v. Wade*, L.R. [1894] 1 Q.B. 574; 42 W.R. 399.

### Limitations:—

- (iv.) **Q. B. D.**—*Time at which Statute Begins to Run—Ambassador—Immunity of Absence Beyond Seas—Return.*—While the ambassador of a foreign State is in this country and accredited to the Sovereign, the Statute does not begin to run against his creditors. The immunity of an ambassador from process of the Court extends for such a reasonable period after he has presented his letters of recall as is necessary to enable him to wind up his official business and return to his own country, although his successor may have been appointed. The Statute does not begin to run against his creditors during such period. The Rules of Court which permit service abroad do not affect the right of a plaintiff under 4 & 5 Anne, c. 16, in cases to which that Statute applies, to bring his action against a defendant after his return from beyond the seas.—*Musurus Bey v. Gadban*, L.R. [1894] 1 Q.B. 533.
- (v.) **C. A.**—*Receipt by Agent—Fraud of Agent—Claim Against Principal—Trustee Act, 1888, s. 8.*—Decision of Ch. D. (see Vol. 19, p. 14, v.) affirmed.—*Thorne v. Heard*, 42 W.R. 274.

See Company, p. 78, iii. Copyhold, p. 80, iv. Trustee, p. 107, iv.

### Local Government:—

- (vi.) **Q. B. D.**—*Justices' Clerk—Salary—Local Government Act, 1888, s. 84.*—A county council, which claims the fines levied by justices of a non-quarter sessions borough, having a separate commission of the peace, is liable to pay the salary of the clerk to the borough justices.—*County Council of Cornwall v. Town Council of Truro*, 63 L.J. M.C. 60.
- (vii.) **Q. B. D.**—*New Street—Width—Laying Out—Bye-Law—Construction.*—A bye law made under sect. 157 of the Public Health Act, 1875, provided that every person who should lay out a new street exceeding 100 feet in length, should lay out the same as a carriage way, with footways, and of a width of not less than thirty-six feet. G. was

- lessee of a piece of ground, together with a right of way over the adjoining road, which was fifteen feet wide, for a distance of more than 100 feet. He began to build two houses on the ground of which he was lessee, but did not widen the road to thirty-six feet. *Held*, that beginning to build the houses did not amount to laying out a new street, and that G. had not infringed the bye-law.—*Gozett v. Maldon Sanitary Authority*, L.R. [1894] 1 Q.B. 327.
- (i.) **Q. B. D.**—*Rates*—*Lighting Rate*—*Coal Mines*—“*Land*”—*Poor Relief Act*, 1601.—Coal mines are not “land,” but are “property (other than land) rateable to the relief of the poor” within the meaning of sect. 33 of the *Lighting and Watching Act*, 1833, and are therefore liable under that section to be rated at the higher rate.—*Thursby v. Churchwardens of Briercliffe with Batwistle*, L.R. [1894] 1 Q.B. 567.
- (ii.) **Q. B. D.**—*Sewer*—*Public Health Act*, 1875, s. 4.—A drain passing through private land, but receiving the drainage of more than one house, is a “sewer” within the Act.—*Travis v. Uiley*, L.R. [1894] 1 Q.B. 233; 63 L.J. M.C. 48; 70 L.T. 242.
- (iii.) **Ch. D.**—*Sewer in Private Street*—*Surface Water Drain*—*Acceptance by Local Authority*—*New Sewer*—*Liability*—*Public Health Act*, 1875, ss. 13, 15, 21, 23, 150, 257.—In 1885 plans for seven proposed houses in part of a private street were submitted to and approved of by a local board. The plans shewed certain surface and slop-water drains leading into a pipe. The houses were built and the drains made, the pipe being connected with a sewer in an adjoining street. There was no express approval or disapproval of the drain by the local board, and it became vested in them on completion. Other houses were subsequently built along the private street, and in 1890 the local board required the frontagers to sewer the street. They did not do so, and the board did the work. *Held*, that the sanction given to the plans did not amount to an approval of the drain as a sewer for part of the street, and that the frontagers were liable for the expenses of making the new sewer.—*Handsworth Local Board v. Taylor*, 69 L.T. 798.
- (iv.) **Q. B. D.**—*Use of Fire Engines*—*Expenses of*—“*Owner*”—*Town Police Clauses Act*, 1847, s. 33.—The expenses incurred by commissioners in sending engines outside their limits for extinguishing fires are to be borne by the “owners” of land or buildings as defined by the *Public Health Act*, 1875, and the definition does not include an occupier as tenant from year to year.—*Sale v. Phillips*, L.R. [1894] 1 Q.B. 349; 68 L.J. M.C. 79.

### Lunatic :—

- (v.) **Ch. D.**—*Partition*—*Person of Unsound Mind*—*Foreign Asylum*—*Committee*—*Order for Sale*—*Declaration that Lunatic is a Trustee*—*Partition Act*, 1868, s. 7—*Trustee Act*, 1850, ss. 9, 20, 30.—An order for sale had been obtained in a partition action, and the certificate found that a person of unsound mind, not so found, was entitled to a share as tenant in tail. He was confined in an asylum in America, under an order of the American Court, and a committee of his property had been appointed by that Court, who declined to convey the lunatic's property in this country, but offered to abide by any order of the English Court. The lunatic was a defendant in the partition action by his guardian *ad litem*. *Held*, that the lunatic might be declared a trustee of his share, and the chief clerk was appointed to convey the lunatic's share to a purchaser in fee; but the proceeds of sale of the share were to be paid into Court and to remain subject to the same uses to which the lunatic's share was subject before the sale.—*Canwell v. Sheer*, 69 L.T. 854.

**Married Woman :—**

- (i.) **Ch. D.—Will—Appointment—General Power—Separate Estate—Married Women's Property Act, 1882, s. 1, sub-ss. 3, 4, s. 4.**—Property appointed by a married woman by will under a general testamentary power, becomes at her death liable for her "debts and other liabilities," even though she had no separate estate when she contracted them.—*Wilson v. Ann*, L.R. [1894] 1 Ch. 549; 70 L.T. 273.

See Bankruptcy, p. 73, v.

**Master and Servant :—**

- (ii.) **Q. B. D.—Accident caused by Street Music—Salvation Army.**—In an action against the defendant for injuries sustained owing to a horse being frightened by a Salvation Army band, *held*, that in the absence of evidence to shew what was the relationship between the bandsmen and the defendant, it could not be inferred that they were his servants or acting under his authority.—*London General Omnibus Co. v. Booth*, 63 L.J. Q.B. 244.
- (iii.) **P. C.—Common Employment**—The appellants contracted with a stevedore to unload their ship, and the contract provided that the owners should provide for each hatch one winch-driver and one hatchman. The respondent, who was employed by the stevedore, was injured by the negligence of one of the hatchmen. *Held*, that the respondent and the hatchmen were not in a common employment, and that the appellants were liable for the negligence of the hatchman.—*Union Steamship Co. v. Claridge*, 70 L.T. 177.
- (iv.) **P. C.—Liability—Scope of Employment.**—*Held*, that the defendants were liable for the act of a contractor who had lit a fire on their land, which had spread to the plaintiff's land, although such contractor in doing so had contravened special stipulations contained in such contract relative to the time at which the fire should be lit. To escape liability it would have been necessary for the defendants to shew that the act was that of a trespasser, and was not within the scope of his employment.—*Black v. Christchurch Finance Co.*, L.R. [1894] 1 A.C. 48; 70 L.T. 77.
- (v.) **C. A.—Access for Workman to Work—Refusal to Use Access—Absenting from Work—Employers and Workmen Act, 1875.**—Decision of Q. B. D. (see Vol. 19, p. 15, iii.) affirmed.—*Bowes & Partners v. Press*, L.R. [1894] 1 Q.B. 202; 63 L.J. Q.B. 165; 70 L.T. 116; 42 W.R. 340.

**Medical Practitioner :—**

- (vi.) **C. A.—"Professional Infamy"—Medical Act, 1850, s. 29—Judicial Inquiry—Bias.**—If a medical man in the exercise of his profession does something which may reasonably be considered disgraceful or dishonourable by his professional brethren of good repute and competency, he is guilty of infamous conduct within the section above-mentioned. A member of the General Medical Council attending an inquiry held at the instance of the Medical Defence Union, had been a member of that Union, but had resigned before the inquiry took place, and had taken no part in preparing the case against the medical man. His resignation had not, by the rules of the Union, taken effect at the time of the inquiry. *Held*, that the decision of the General Medical Council was not invalidated by the presence of such member, and that the Council was right in holding that the medical man had, by certain advertisements, been guilty of professional infamy.—*Allinson v. General Medical Council*, 42 W.R. 289.

**Metropolis Management:—**

- (i.) **Q. B. D.**—*Building Line—Metropolis Management Act, 1862, s. 75.*—In 1890 the appellant's lessor began to build a shop in accordance with deposited plans, and discontinued building when the walls were about twelve feet high. There were then no buildings in the street. In 1892 he built a row of houses on the same side, standing further back than the shop. In 1893 the appellant, having taken a lease of the site of the shop, without the consent of the respondents continued the erection of the shop. The building line was afterwards fixed to be the line of the houses. *Held*, that the appellant was not entitled to continue the building of the shop in advance of the building line without leave, and that an order to demolish such part as was in advance of the line was rightly made.—*Wendon v. London County Council*, L.R. [1894] 1 Q.B. 227; 63 L.J. M.C. 44; 70 L.T. 94; 42 W.R. 370.
- (ii.) **Q. B. D.**—*Building—Builder Erecting—Notice to—Completion—Metropolitan Building Act, 1855, ss. 45, 46.*—A justice has no jurisdiction to make an order under sect. 46 upon a builder who has completed the building and given up possession of it, although he was engaged in erecting it at the time that notice under sect. 45 was served on him.—*Wallen v. Lister*, L.R. [1894] 1 Q.B. 312; 63 L.J. M.C. 44; 42 W.R. 318.
- (iii.) **Q. B. D.**—*Flagging Footway—Expenses of—Metropolis Management Act, 1890, s. 1.*—The expenses of flagging footways are to be borne by the owners of the houses and land on both sides of the road or street, or on both sides of the section of the road or street, in which the footway is situate.—*Paddington Vestry v. North Metropolitan Railway and Canal Co.*, L.R. [1894] 1 Q.B. 633; 42 W.R. 223.
- (iv.) **Q. B. D.**—*New Streets—Expenses of Paving—Cemetery Company.*—A cemetery company incorporated by Act of Parliament and empowered to sell the exclusive right of burial in vaults in perpetuity or for limited periods are not exempt from payment of their apportioned share of the cost of paving a new street on which their land abuts, upon the ground that their land is not in fact let at a rack-rent, or that the restrictions on the sale of the consecrated portions of it place it *extra commercium*.—*Vestry of St. Giles, Cumberwell v. London Cemetery Company*, 63 L.J. M.C. 74.
- (v.) **C. A.**—*Repairs of Road—Necessity of Works—Metropolis Management Act, 1890, s. 3.*—Decision of Q. B. D. (see Vol. 19, p. 50, iii.) affirmed.—*Stroud v. Wandsworth Board of Works*, 70 L.T. 190; 42 W.R. 355.

**Mortgage:—**

- (vi.) **Ch. D.**—*Solicitor—Mortgagee—Profit Costs—Agent—Clogging Redemption—Settled Account—Re-opening.*—A solicitor-mortgagee cannot, without express agreement, charge the mortgagor with any profit costs, either for work done as solicitor for the mortgagor in respect of the mortgage, or, where the mortgage is of a life interest, for collecting and distributing the income of the property as agent for the mortgagor; but, *semble*, that the partner of such solicitor may receive remuneration for his trouble. A covenant in a mortgage of a life interest to the mortgagor's solicitor for payment of the sum advanced and "of every other sum of money which may hereafter be advanced or paid by the mortgagee to or on account of or become owing to the mortgagee by the mortgagor" does not include profit costs of the mortgagee, either as solicitor to the mortgagor, or as his agent for receiving and distributing the income, such covenant being as regards such profit costs void as clogging the equity of redemption; and the mortgagor will have leave to surcharge and falsify settled accounts, so far as

regards such profit costs, unless the mortgagee can prove that the mortgagor was at the time, made fully aware of his legal rights in respect of those items. —*Eyre v. Wynn Mackenzie*, L.R. [1894] 1 Ch. 218; 63 L.J. Ch. 239; 69 L.T. 823; 42 W.R. 220.

- (1.) **C. A.**—*Trade Fixtures—Hire and Purchase Agreement—Removal.*—E., a nursery gardener, agreed with the defendant to take a boiler and pipes under an agreement to purchase them by instalments, the same to be the defendant's property until the payment of the instalments. The boiler and pipes were fixed in brickwork. E. mortgaged his premises to the plaintiff without notice of the agreement and before the boiler and pipes were fixed. He made default in paying the instalments, and the defendant removed the boiler and pipes. The plaintiff claimed that they had been affixed to the mortgaged property without his consent, and had become part of the soil, and were irremovable as against him. *Held*, that by allowing E. to remain in possession, the plaintiff authorised him to carry on his business, which would include bringing trade fixtures into the premises on the terms of a hiring agreement; and that having regard to this implied authority, to the fact that the fixtures were not the property of E., and that E. was in possession at the date of their removal, the plaintiff's claim failed. —*Gough v. Wood*, 70 L.T. 297.

### Nuisance :—

- (ii) **Ch. D.**—*Overhanging Branches of Trees—Right to Abate.*—To allow the branches of trees to overhang an adjoining property is a nuisance, which the owner of such property is entitled to abate, although the branches have overhung his property for twenty years. But reasonable notice must be given of the intention to abate the nuisance. Damages were granted in a case where the defendant cut away such branches without giving notice. —*Leamon v. Webb*, 70 L.T. 275.
- (iii.) **C. A.**—*Sewage—Local Authority Liability for Negligence—Public Health Act, 1875, s. 19.*—Where a public body makes and maintains works under statutory powers for the public benefit, and a person in the course of using the works in exercise of his statutory rights suffers damage, the rights of the individual and the liability of the public body are to be ascertained solely by reference to the statutory provisions under which the works are made and maintained. The plaintiffs were damaged by the overflow of a sewer, belonging to the defendants as the local sanitary authority, with which the plaintiffs' drains were connected under the provisions of the Public Health Act, 1875. The overflow was caused by the increase in the number of drains connected with the sewer, and the defendants had not been guilty of negligence in the construction or maintenance thereof, nor of negligence (in the sense of want of reasonable care and diligence) in not providing another sewer. The plaintiffs sued for damages and an injunction. *Held*, that the action could not be maintained. —*Stretton's Derby Brewery Co. v. Mayor, &c., of Derby*, L.R. [1894] 1 Ch. 431; 63 L.J. Ch. 135; 69 L.T. 791.
- (iv.) **Q. B. D.**—*Thames Conservancy Acts—Liability to Remove Nuisance on Foreshore—Public Health (London) Act, 1891, s. 4.*—It was sought to make the Thames Conservators, as owners of the foreshore of Lunelkirk Creek, a part of the river within their jurisdiction, liable to abate a nuisance caused there by the accumulation of refuse and filth, as the persons by whose acts the nuisance was caused could not be found. *Held*, that they were not liable, as the nuisance was not caused by their act or default, and they were not authorised to expend their funds in removing such a nuisance, nor required to do so by their Acts. —*Conservators of the River Thames v. Sanitary Authority of the Port of London*, L.R. [1894] 1 Q.B. 647; 69 L.T. 803.



- (i.) **Ch. D.**—*Urinal—Proper Position—Discretion of Local Authority—Public Health Act, 1875, s. 39.*—Where an urban authority has established a urinal, in the absence of *mala fides*, and assuming that no case of nuisance is made out, the onus lies on persons objecting to show that the site is not proper and convenient, and evidence that there are other sites more proper and convenient is irrelevant. *Quere*, whether the decision of the local authority is not conclusive.—*Pethick v. Mayor, &c., of Plymouth*, 70 L.T. 804; 42 W.R. 246.

### Parliament:—

- (ii.) **Q. B. D.**—*Petition by Subject—Right of Member to Refuse to Present.*—Though it is the right of the subject to petition Parliament, no action will lie against any particular member of Parliament who refuses to present a petition.—*Chaffers v. Goldsmid*, L.R. [1894] 1 Q.B. 186; 68 L.J. Q.B. 59; 70 L.T. 24, 42 W.R. 239.

### Partition:—

- (iii.) **Ch. D.**—*Party Wall—Trespass—Reversioner.*—An order was made at the instance of one of two tenants in common against the wish of the other for the partition, longitudinally and vertically, of the party wall which separated the gardens of two adjoining houses. A tenant in common is entitled as of right to a partition subject to the provisions for sale contained in the Partition Act, 1868. The occupiers of a house and garden, No. 37, pulled down and rebuilt a wall which separated the garden from that of No. 36, and in doing so trespassed on the garden of No. 36, by placing in the soil thereof foundations and footings of the new wall extending further into the garden than those of the old wall. No. 36 was held by a tenant under a lease. *Held*, that as the trespass was of a permanent nature the reversioner was entitled to maintain an action of trespass, although the tenant made no complaint.—*Mayfair Property Co. v. Johnston*, L.R. [1894] 1 Ch. 508. See *Lunatic*, p. 90, v.

### Partnership:—

- (iv.) **Ch. D.**—*Liability of Retiring Partner—Banker—Overdraft—Principal and Surety—Release.*—R., in December, 1884, retired from a firm in which he was a partner, and assigned all his interest to his partners, they convenanting to indemnify him against the liabilities of the firm. The B. Bank, to which the firm owed an overdraft, had full knowledge of these circumstances. The overdraft was debited in the books to the new firm. In 1886 the bank resolved that the new firm's account might be for a short time in excess of the nominal limits of £50,000, and in 1889 they resolved that the firm might have an overdraft of £53,000 till March, 1889. The firm afterwards failed. *Held*, that R., after retiring from the firm, was still liable for the balance due to the bank; but that he was liable only as surety, and that by the extension of time granted in 1889 he was released from his liability as surety.—*Rouse v. Bradford Banking Co.*, 69 L.T. 828.
- (v.) **Ch. D.**—*Share of Profits of Business—Co-Ownership of Realty—Partnership Act, 1890, s. 1, sub-s. 1; s. 2, sub-ss. 1, 3; s. 20, sub-s. 3.*—A testator gave all his residuary estate, comprising three freehold houses and the goodwill and plant of his business, to his two sons equally. The sons carried on the business after his death in two of the freehold houses until the death of one of them. There were no articles of partnership, nor any agreement for a partnership. They kept no accounts, but drew equal weekly sums from the business. They mortgaged all the freehold houses, and spent the mortgage money in the business, and in

adding a portion of the third house to the two in which the business was carried on. *Held*, that there was a partnership in the business, but not in any of the houses.—*Davis v. Davis*, L.R. [1894] 1 Ch. 393; 68 L.J. Ch. 219; 70 L.T. 265; 42 W.R. 312.

- (1.) **Ch. D.**—*Loss of Capital—Remuneration and Liability of Surviving Partner.*—A business was carried on at a loss for two years, by the survivor of two partners. The deceased partner had supplied all the capital. When the business was wound up the amount realised was not sufficient to repay the whole of the capital. *Held*, that the surviving partner was not liable to contribute to make good the lost capital, but was not entitled to any remuneration for his services.—*Aldridge v. Aldridge*, 42 W.R. 409.

### Patent:—

- (ii.) **Ch. D.**—*Practice—Revocation—Petition—Mode of Trial—Foreigner—Security for Costs—Patents, &c., Act, 1883, s. 26.*—In the case of a petition for the revocation of a patent, the patentee, who was out of the jurisdiction, issued a summons for further and better particulars of objections, and for directions that the petition should be heard on oral evidence. *Held*, that the latter part of the summons was unnecessary, and that he must pay the costs. The petitioner issued a summons that the patentee should give security for costs. *Held*, that as the patentee was brought before the Court as a defendant, he ought not to be ordered to give security. — *In re Miller's Patent*, 70 L.T. 270.

### Poor Law:—

- (iii.) **C. A.**—*Rating—Exclusive Occupation.* —Decision of Q. B. D. (see Vol. 19, p. 18, in ) affirmed.—*Mayor, &c., of Southport v. Ormskirk Assessment Committee*, 63 L.J. Q.B. 250; 69 L.T. 852.
- (iv.) **Q. B. D.**—*Rating—Valuation List—Approval of—Time—Union Assessment Committee Acts, 1862, s. 18; 1864, s. 1.*—An assessment committee approved a valuation list before the expiration of the twenty-eight days within which ratepayers could give notice of objections after the public notice of deposit of the list had been issued. *Held*, that the valuation list and the rate or assessment based on it were bad.—*Reigate Union Assessment Committee v. S.E.R.*, L.R. [1894] 1 Q.B. 411; 63 L.J. M.C. 65.

### Power:—

- (v.) **Ch. D.**—*General Power of Appointment—Exercise by Will—Effect of.*—A testatrix having a general power of appointment over real estate, gave all the real and personal estate which she might be possessed of or entitled to, or of which by virtue of any power or authority she was competent to dispose "in manner following"; and then after specific devises and bequests she gave the property forming the subject of the power to her husband, and made him her residuary legatee. She made no distinction between the property over which she had the power, and her own property. Her husband predeceased her. *Held*, that she had made the property subject to the power her own for all intents and purposes; and that it went to her heirs, and not as in default of appointment.—*Coxen v. Rowland*, L.R. [1894] 1 Ch. 406; 63 L.J. Ch. 179; 70 L.T. 89.
- (vi.) **Ch. D.**—*Power of Sale—Duration—Remoteness.*—Where a deed or will limits real and personal estate to one for life, and upon the death of the tenant for life upon trust for division, with power or authority to the trustees to sell at such times as they shall think fit, such power of sale is not void for remoteness, but may be exercised within a reason-

able time after the death of the tenant for life, and after the property has become absolutely vested in possession, if on the construction of the instrument it appears to be the intention of the settlor or testator that it should be then exercised.—*In re Lord Sudley and Baines*, L.R. [1894] 1 Ch. 334; 62 L.J. Ch. 194; 42 W.R. 231.

### Practice:—

- (i.) **C. A.**—*Costs - Prohibition Rule absolute without Pleadings - Supreme Courts of Judicature Act, 1890, ss. 4, 5*—The right to grant prohibition not being a jurisdiction belonging exclusively to the Crown side of the Queen's Bench Division, the High Court, in making a rule absolute for a prohibition without pleadings, may make an order for costs.—*Reg. v. Justices of the County of London and the London County Council*, L.R. [1894] 1 Q.B. 453; 70 L.T. 118.
- (ii.) **C. A.**—*Costs-- To Abide "Result" of New Trial—Certificate*.—In an action for false imprisonment, the Court of Appeal, in ordering a new trial, directed that the costs of the former trial should abide the result of the new trial. In the new trial the jury found a verdict for the plaintiff, damages one farthing, and the judge refused to give a certificate for costs. *Held*, that the "result of the new trial" meant the result as to costs, and that the plaintiff was not entitled to costs of the former trial. *Brotherton v. Metropolitan District Railway Joint Committee*, L.R. [1894] 1 Q.B. 666; 70 L.T. 218; 42 W.R. 278.
- (iii.) **P. C.** *Estoppel - Incorrect Judgment Roll*.—Where the judgment roll in an action, as made up, does not correctly represent that which was really found at the trial, a court of equity ought not, in subsequent proceedings between the same parties, to grant an injunction to enforce a right which was not established by any finding of the jury in the former action, notwithstanding what appears on the face of the judgment roll.—*Went v. Moss*, 70 L.T. 178.
- (iv.) **Ch. D.**—*Further Consideration—Report of Official Referee—No Motion to Vary - R.S.C., 1883, O. xxxvi., r. 54*. When, on the further consideration of an action, one party asks the Court to adopt the report of the official referee made in the action, the Court will not, at the request of the other party, go behind the report and look into the evidence on which it was based, where such party has given no notice of motion to vary the report or remit the matter for re-hearing.—*Hardy v. Fitton*, 63 L.J. Ch. 164; 42 W.R. 281.
- (v.) **Q. B. D.**—*Interpleader - District Registry - R.S.C., 1883, O. xxxv., r. 6*.—A district registrar has no jurisdiction to make an interpleader order.—*Hood v. Yates*, L.R. [1894] 1 Q.B. 240; 63 L.J. Q.B. 218; 42 W.R. 412.
- (vi.) **Q. B. D.**—*Mayor's Court - Security for Costs of Appeal—Mayor's Court Act, 1857, s. 8*.—The deposit of a security for the costs of appeal from the Mayor's Court is the condition precedent to the right to appeal, and not a mere matter of procedure, and is not superseded by any High Court rule which only affects procedure; and the failure to make the deposit is sufficient to sustain a preliminary objection to the appeal.—*Morgan v. Bowles*, L.R. [1894] 1 Q.B. 236; 63 L.J. Q.B. 84; 42 W.R. 269.
- (vii.) **C. A.**—*Pauper—County Court Appeal—R.S.C., 1883, O. xvi., r. 22; O. lxviii., r. 1*.—Leave to proceed as a pauper may be granted to a person appealing from a county court.—*Clements v. L. & N.W.R.*, 42 W.R. 338.

- (i.) **C. A.**—*Pauper—Notice of Motion—Signature of Solicitor—R.S.C., 1883, O. xvi., r. 29—Costs.*—A person who has been admitted to sue in *forma pauperis*, and to whom no solicitor has been assigned, may serve a notice of motion, signed by himself. Where a plaintiff suing in *forma pauperis* does not appear, and the case is accordingly struck out, the Court may order him to pay the costs thrown away as a condition of allowing the case to be re-instated.—*Jacobs v. Crusha*, 42 W.R. 387.
- (ii.) **Ch. D.**—*Payment into Court—Order for—Verbal Admission, R.S.C., 1883, O. xxxii, r. 6.*—An order for payment of money into Court may be made against a defendant, who has verbally admitted that he has such money in his possession or under his control. Upon a motion for such an order an affidavit proving the submission was made. A copy of the affidavit was served on the defendant with the notice of motion, which stated that the affidavit would be read at the hearing of the motion. The defendant did not answer the affidavit, and did not appear at the hearing of the motion. *Held*, that the order should be made. —*Efrench v. Sprouston*, L.R. [1894] 1 Ch. 499, 70 L.T. 160; 42 W.R. 377.
- (iii.) **C. A. & Q. B. D.**—*Security for Costs—Foreigner Suing on Foreign Judgment—R.S.C., 1883, O. lxxv, r. 6*—A foreigner resident abroad brought an action on a French judgment, obtained in an action which had been defended in the French Courts, and in bringing which the plaintiff had given security for costs. Upon an affidavit by the defendant alleging fraud on the part of the plaintiff, leave was given to defend, and a defence and counter-claim were put in. *Held*, that the plaintiff ought to be ordered to give security for costs.—*Crozat v. Brogden*, 42 W.R. 317 and 353.
- (iv.) **Q. B. D.**—*Sequestration—Judgment—Order for Payment—R.S.C., 1883, O. xli, r. 5, O. xliii, rr. 3, 6, O. xliii, r. 6*—A judgment having been recovered against a married woman, the master made an order directing her to pay the amount within ten days, and, in default of payment, giving leave to issue a writ of sequestration against her separate property. *Held*, that there was no jurisdiction to make such an order.—*Hurlbert v. Cathcart*, L.R. [1894] 1 Q.B. 244; 63 L.J. Q.B. 121.
- (v.) **C. A.**—*Sequestration—Costs—R.S.C., 1883, O. xliii., r. 7.*—An order giving leave to issue a writ of sequestration forthwith to enforce the payment of costs may be made without the necessity of first obtaining a four-day order limiting the time within which the costs must be paid.—*In re Lumley*, 42 W.R. 401.
- (vi.) **C. A.**—*Writ—Service—Foreign Firm—Business within Jurisdiction—R.S.C., 1883, O. xlviii. a, rr. 1, 3, 8.*—A writ may be issued without leave against a foreign firm, the partners of which reside out of the jurisdiction, if they carry on business within the jurisdiction.—*Worcester City and County Banking Co v. Pirbank, Pauling & Co.*, 70 L.T. 102; 42 W.R. 402.
- (vii.) **Ch. D.**—*Service out of Jurisdiction—R.S.C., 1883, O. xi, r. 1 (d)—Construction of Rule*—It is a condition precedent to the service of a writ out of the jurisdiction under the rule above-mentioned, that there is property situate within the jurisdiction; and the period at which there must be such property is, either when leave is asked to effect service, or possibly when service is actually effected, or at the latest when an application is made to set aside the service. *Seem*, if an action is properly commenced, other property subsequently coming within the jurisdiction can be dealt with in the action without the issue of a fresh writ.—*Winter v. Winter*, L.R. [1894] 1 Ch. 421; 63 L.J. Ch. 165; 69 L.T. 759.

- (1.) **C. A.**—*Writ Indorsed for Liquidated Demand—Reduction by Payment—Judgment in Default—Amount*—*R.S.C.*, 1883, *O. xiii.*, *r. 3.*—When a writ of summons is indorsed for a liquidated demand, which is reduced by payment after issue of the writ, judgment in default of appearance ought only to be issued for the amount actually due, and the defendant is entitled to have any judgment for a larger amount set aside.—*Hughes v. Justin*, *L.R.* [1894] 1 *Q.B.* 667; 42 *W.R.* 339.
- (ii.) **Q. B. D.**—*Specially Indorsed Writ—Sufficiency—Amendment—Marking Amended Documents—Appearance*—*R.S.C.*, 1883, *O. iii.*, *r. 6 (F)*; *O. xxviii.*, *rr. 9, 10.*—In action by the successor in title to a lessor to recover from the lessees premises of which the lease had expired, a specially indorsed writ was amended by order, and as amended stated the date of the lease, the length of the term, and its devolution. The copy served omitted to state the length of the term, and was not marked with the dates of the order for amendment and of the amendment, which dates were marked on the writ. The defendant did not enter a fresh appearance to the amended writ. *Held*, that the copy served was sufficiently indorsed; that the omission to mark the dates on the copy was not material; and that the appearance of the defendant to the original writ stood as a good appearance to the amended writ.—*Hammer v. Clifton*, *L.R.* [1894] 1 *Q.B.* 238; 42 *W.R.* 287.
- (iii.) **P. C.**—*Writ Specially Indorsed—Ejectment—Estoppel*.—In an action of ejectment, in which the circumstances under which the tenant came into possession are in dispute, judgment ought not to be signed under an order of the New Zealand Court, which is identical with Order xiv. of the English Rules of Court. A plaintiff in an ejectment cannot rely on an alleged estoppel on the part of the defendant to relieve him from the necessity of proving his own title, when the facts out of which such estoppel arises are in dispute.—*Jones v. Stone*, 70 *L.T.* 174.
- (iv.) **Q. B. D.**—*Writ Specially Indorsed—Affidavit—Sufficiency of*.—Upon an application for leave to enter final judgment upon a writ specially indorsed with a claim for the amount of a dishonoured cheque, the affidavit verifying the cause of action need not allege that notice of dishonour was given to the drawer.—*May v. Chidley*, *L.R.* [1894] 1 *Q.B.* 451.
- (v.) **C. A.**—*Writ Specially Indorsed—Lease—Forfeiture—Claim for Possession*—*R.S.C.*, 1883, *O. iii.*, *r. 6 (F)*; *O. xiv.*, *r. 1.*—A lessor gave his lessee notice to quit, under a proviso in the lease which gave power so to do on the rent being in arrear. *Held*, that the lessor could not sign final judgment under *O. xiv.*, *r. 1*, in an action for recovery of the premises.—*Arden v. Boyce*, 42 *W.R.* 354.

### Public Health:—

- (vi.) **Q. B. D.**—*Diseased Meat—Evidence of Knowledge of Owner—Public Health Act, 1875, s. 117.*—A person having in his possession diseased meat exposed for sale can be convicted under the section above-mentioned, without proof of actual knowledge that the meat was so diseased.—*Blaker v. Tullstone*, *L.R.* [1894] 1 *Q.B.* 345; 63 *L.J. M.C.* 72; 70 *L.T.* 30; 42 *W.R.* 253.

### Quarter Sessions:—

- (vii.) **Q. B. D.**—*Continuing Court—Consent to Tax out of Sessions*.—A court of quarter sessions is a continuing court from sessions to sessions. The effect of an order for costs made at quarter sessions in July may be determined by a Court held in the following January. A consent

to the general practice for the clerk of the peace to tax out of sessions the costs of the successful party in an appeal to quarter sessions may be implied, although such consent was not either applied for or granted in terms.—*Midland Railway Co. v. Edmonton Union*, 63 L.J. M.C. 38.

**Railway :—**

- (i.) **Q. B. D.**—*Carriage of Goods—Loss by Theft of Company's Servant—Liability for*—*Railway and Canal Traffic Act, s. 7*—The loss of goods by the theft of a railway company's servant, without negligence on the part of the company, is not a loss "occasioned by the neglect or default of the company or its servants" within the meaning of the section above mentioned, and therefore the company can at common law protect themselves against liability by a special contract, although such contract is not reasonable within the requirements of the Act—*Shaw v. G.W.R.*, L.R. [1894] 1 Q.B. 373, 70 L.T. 219, 42 W.R. 285.
- (ii.) **Q. B. D.**—*Cloak-Room Charges—Goods deposited by Hirer—Lien—Reasonable Facility*—*Railway and Canal Traffic Act, 1854, s. 2*.—A cloak-room is a "reasonable facility" for the receipt and forwarding of traffic which a railway company is bound to afford, and therefore goods received thereat are received by the company as common carriers, and the company are entitled to a lien for their charges, even when the goods are deposited by a person who is not the true owner.—*Singer Manufacturing Co. v. L. & S.W.R.*, 70 L.T. 172, 42 W.R. 347.
- (iii.) **C. A.**—*Compensation—Injurious Affecting Land—Compensation once Awarded—Further Injury*.—Decision of Q. B. D. (see Vol. 19, p. 21, iii) reversed.—*Attorney-General v Metropolitan Railway Co.*, L.R. [1891] 1 Q.B. 384, 69 L.T. 811, 42 W.R. 381.
- (iv.) **P. C.**—*Construction—Accommodation Works*.—A colonial Act, confirming a provisional agreement for the making of a railway, empowered the promoters to take land, but enacted that the Government were to pay the compensation, and were to conduct the proceedings for fixing the amount thereof. The promoters were to construct and maintain such accommodation works as might be fixed by agreement with the owners of land taken at the time of ascertaining the compensation. *Held*, that the Government had power to bind the promoters without their consent, and against their express instructions, to construct such accommodation works as were reasonably necessary.—*West India Improvement Co. v. Attorney-General for Jamaica*, 70 L.T. 80.
- (v.) **Ch. D.**—*Right to Support—Mines—Railways Clauses Act, 1845, ss. 77, 78*.—A tramway was constructed under a private Act in 1825. By the Act mines were to be deemed to be excepted out of any conveyance, and might be worked by the owners, though not so as to injure the tramway. In 1855 by a private Act the earlier Act was repealed, and provisions were made for altering the tramway so as to be suitable for locomotive engines. The Railways Clauses and Lands Clauses Acts were incorporated, but it was provided that the Act should be without prejudice to anything done under the earlier Act. The defendants caused subsidence by working the mines under the line, and claimed to be entitled to do so unless the mines were purchased under the Railways Clauses Act. *Held*, that the bargain as to the working of the mines made in the Act of 1825 still held good, although the line was differently used; that the rights under that Act were reserved by the Act of 1855; and that the defendants must be restrained from working their mines so as to injure the line.—*G.W.R. v. Cefu Cribbwr Brick Co.*, 70 L.T. 279.

- (i) **Railway Commission Court**—*Reasonable Facilities for Traffic*—*Order to Keep open Passenger Station*—*Railway and Canal Traffic Act, 1854, s. 2* The company finding that a certain branch line was little used for passenger traffic discontinued running passenger trains thereon and removed a station. There were stations on the main line about a mile distant from such station. *Held*, that the Court had power to direct a station to be kept open and that as there had been a substantial amount of passenger traffic upon the branch line the company must provide reasonable facilities for the same by re-opening the station and running passenger trains on the branch line—*Darlington Local Board v. Fiddall* (1894) 69 L.T. 806

### Registration:

- (ii) **C. A.** *Parish Act*—*Regulation of Qualification Amendment*—*Parliamentary and Municipal Act 1878, s. 28, sub-s. 2 (3)*—*H* claimed to be placed in Division I of the list of voters as a parliamentary voter and Burgess. The claim stated the nature of the qualification as dwelling house successive and described the qualifying property as two houses. *H* had lived in one only of such houses during the qualifying period. *Held* that the qualification in respect of the occupation of one house is different from that in respect of the occupation of two in succession and that the revising barrister could not amend the claim by striking out the word "successive" and the house in which *H* had not lived—*Hurcum v. Hillyard*, L.R. 1894 1 Q.B. 571 (3) L.J. Q.B. 251. *Hurcum v. Leun (No. 1)* of West Ham 70 L.T. 29. *Mann v. Johnson* (3 L.J. Q.B. 94) 70 L.T. 29.
- (iii) **C. A.** *Parish Act*—*Service of Notice of Objection*—*Standard Duplicate*—*Ordinary course*—*11 L.T. 6 and 7 L.T. 18 ss. 17, 100* Notices of objection to voters were posted addressed to barracks where the voters resided. According to the regulations letters thus addressed are not delivered at the barracks by postmen but taken there from the post office by orderlies. The notices were brought to the barracks by orderlies on August 19th when the voters were absent in camp and were not sent on till August 21st. *Held* that "ordinary course of post" means the general course of post with regard to the delivery of letters to persons resident in the district and that as in such course of post the notices would have been delivered at the barracks on or before August 20th but for the special military arrangements the service thereof on or before August 20th was proved by the production of duplicate notices stamped at the post office. *Kemp v. Hanllyn*, L.R. [1894] 1 Q.B. 583, 42 W.R. 369.
- (iv) **Q. B. D.** *Occupier*—*Habitual Tenant*—*Held* that the inhabitant occupier of a house which though rateable has not been rated to a poor rate made during the qualifying period, and in respect of which such rate has not been paid is not entitled to either the parliamentary or the municipal franchise. *Palmer v. Wade* L.R. [1894] 1 Q.B. 268.

### Restraint of Trade:

- (v) **Ch. D.** *Agreement not to Carry on Business*—*Wife trading separately*—The defendant who had carried on the business of a grocer under the name of J. P. Hancock sold the business to the plaintiff and agreed not to "carry on or be in anywise interested in" any similar business within a named area. The defendant's wife (against his wishes) resumed to start her nephew in business and opened a grocer's shop within the area under the name of Mrs. J. P. Hancock. The defendant took no part in the business, which was managed by his wife's nephew with some aid from her. She found the capital out of her separate estate, and the defendant took no share in the profits.

He assisted his wife to obtain a lease of the shop, wrote a circular to "old friends," and distributed a few copies of the circular. He also introduced the nephew to provision merchants, and attended the bank when his wife opened an account in her own name for the business. *Held*, that the defendant had not broken the agreement.—*Smith v. Hancock*, L.R. [1894] 1 Ch. 209; 63 L.J. Ch. 201; 70 L.T. 163.

**Revenue :—**

- (i.) **C. A.**—*Stamp—Conveyance on Sale—Amalgamation of Railways.*—A private Act provided that two railway companies should be amalgamated with the Great Western Railway Company. The shareholders in one of such companies were, in exchange for their shares, to become holders of guaranteed stock of the Great Western Railway Company in certain specified proportions. In the case of the other company the consideration was to be the payment by the Great Western Railway Company of the principal and interest of certain outstanding debentures. A copy of the Act was to be chargeable with the same stamp duty as would have been chargeable had the transaction been effected by a written instrument. *Held*, that the transaction was in effect a transfer on sale, and that the copy of the Act was chargeable as an executed instrument under the head "Conveyance or transfer on sale" in the Schedule to the Stamp Act, 1891, with *ad valorem* duty in respect of the value of the guaranteed stock issued to shareholders of the first company, and with *ad valorem* duty in respect of the value of the outstanding debentures of the second company.—*G.W.R. v. Commissioners of Inland Revenue*, L.R. [1894] 1 Q.B. 507; 70 L.T. 86; 42 W.R. 211.
- (ii.) **C. A.**—*Stamp—Conveyance—Stamp Act, 1870, s. 70, and Schedule* - Decision of Q. B. D. (see Vol. 19, p. 58, i.) reversed. - *Foster and Co. v. Commissioners of Inland Revenue*, L.R. [1894] 1 Q.B. 516; 63 L.J. Q.B. 173; 69 L.T. 817.

**Right of Way :—**

- (iii.) **Ch. D.** *Grant of—Defined way—Limitation of User—Interference.*—The plaintiff purchased Nos. 1, 2, and 3, H. cottages, and land in rear thereof, which property was conveyed by deed, together with a right of way on foot along the passage coloured blue on a plan, which ran from F. Lane along the south side of No. 3 H. cottages to the plaintiff's land. The land was at the date of the deed, and had ever since been, used as a nursery garden. The passage was in general three feet wide, but increased to 10 feet wide, where it reached the plaintiff's land, into which a three feet gate opened from it. The defendant erected a building partly on the wider part of the passage, which reduced the frontage of the plaintiff's land to the way by seven feet, and prevented the plaintiff from having any access to the way except through an opening occupying the exact site of the said gate. *Held*, that the grant of the footway was not limited to a way suitable for the occupation of the land as a nursery garden, but gave a right to the user of the whole of the way for any reasonable purpose; and that the plaintiff was entitled to have access to the way, not only through the gate, but at any point convenient to himself. *Held*, therefore, that the plaintiff was entitled to a mandatory injunction to the defendant to remove his building, as a substantial interference with his right of way.—*Sketchley v. Beuger*, 69 L.T. 754.

**Sale of Goods :—**

- (iv.) **C. A.**—*Wheat to be Shipped—3,000 Tons more or less—Payment against Bills of Lading—Tender—Refusal* - By a contract in writing K. bought from B. "about 3,000 tons of wheat (10 per cent. more or less) to be



shipped by steamer." Payment was to be made in cash in exchange for bills of lading. There were provisions as to price of the quantity by which the shipment exceeded or fell short of the medium quantity of 3,000 tons. B. told K. that he had shipped 3,800 tons, and that he appropriated 3,000 tons thereof to his contract with K., and sent him an invoice for 3,000 tons. The bills of lading of the 3,800 tons were two for 1,750 tons each, and two for 150 tons each. B. offered to deliver to K. either all the bills of lading, or the two for 1,750 tons each, but K. refused to accept the tender, or to make any payment. *Held*, that the buyer was entitled to have bills of lading for the exact amount bought, and that he was justified in refusing the tender.—*In re Arbitration between Keighley, Marted, & Co. and Bryan, Durant & Co.*, 70 L.T. 155.

### Settled Land:—

- (i.) **Ch. D.—Capital Money—Improvement—Alteration—Settled Land Acts, 1882, s. 25, 1890, s. 13, sub s. 11**—The providing of a heating apparatus, though rendering a mansion-house more comfortable, is not an "improvement," nor an "addition or alteration in the building," so as to authorise the expenditure of capital money thereon. But the providing of a new roof in place of a worn-out one, and the re-arrangement of the main entrance, are "alterations" which, if reasonably necessary and proper, may be paid for out of capital.—*In re Gaskell's Settled Estates*, L.R. [1894] 1 Ch. 485; 63 L.J. Ch. 243, 42 W.R. 219.
- (ii.) **Ch. D.—Rebuilding—Annual Rental—Settled Land Act, 1890, s. 13, sub-s. iv.**—The alteration, reconstruction, and enlargement of a mansion-house, where part of the house was unaltered, and the walls of another part were utilised, *held*, to be a "re-building" within the section above-mentioned. The "annual rental" within the meaning of the proviso does not include anything in respect of land in the occupation of the tenant for life, but includes the amount of rent usually paid for a farm temporarily unoccupied.—*In re Walker's Settled Estate*, L.R. [1894] 1 Ch. 189; 70 L.T. 259.

### Settlement:—

- (iii.) **Ch. D.—Wife's Property—Ultimate Trust—"Without having been married."**—In a marriage settlement, the ultimate trust of the wife's property was, in default of appointment, for such persons as under the statutes for the distribution of intestates' estates, would, on her death, have been entitled thereto, if she had died possessed thereof intestate "and without having been married." The wife died without appointment, and leaving one child of the marriage. *Held*, that such child was entitled.—*Stoddart v. Saville*, L.R. [1894] 1 Ch. 480; 42 W.R. 361.

### Ship:—

- (iv.) **C. A.—Charter-party—Construction of—Sale at Port of Distress—German Law.**—By a charter-party made in English form, between the London broker of a German shipowner and London merchants, it was provided that a German ship should load a cargo of rice, and proceed to named British ports for orders to discharge in the United Kingdom or on the Continent. The freight to be paid on delivery of cargo. On the voyage the ship had to put into port and part of the cargo being damaged by sea-water was condemned and sold. The shipowner claimed that full freight was, by the law of the flag, payable on the part so sold. *Held*, that the intention of the parties was to make an English contract, that the charter-party fully provided for freight, and that the charterers were not liable for any freight on the part of the cargo so sold at the port of distress.—*The Industrie*, L.R. [1894] P. 58; 42 W.R. 280.

- (i) **C. A.** *Charter party Demurrage*—"Restraints of Princes and Juries"—Decision of Q B (see Vol 19, p 61, 1) affirmed *Smith and Service v Rosario Nitrate Co*, L R [1894] 1 Q B 174, 70 L J 68
- (ii) **P. D.** *Charter party—Disbursements at Foreign Port—Advance*—In the charter party of a ship it was provided "Cash for or in lieu of disbursement at port or ports of loading not exceeding £150 in all to be advanced" at a stated exchange. *Held* that the shipowner was not bound to take an advance of the whole £150 so that if he did not require the whole of that sum the charterer could not claim to be recouped the profit he would have made by exchange on an advance of the whole sum. *The Primula* L R [1894] P 128, 70 L J 233
- (iii) **C. A.**—*Charter party—Lump sum for Freight—Lien for*—By a charter party by which a ship was chartered it was provided that the charterers might recharter the ship at any freight without prejudice to the charter party. It also provided that the liability of the charterer should cease on the vessel being loaded, the owner to have a lien on the cargo for all freight under the charter party. The ship was rechartered and a bill of lading was given by which freight was to be paid at a certain rate per ton on the cargo as delivered. The cargo diminished during the voyage and the bill of lading freight did not cover the lump freight under the charter party. *Held* that the charterer was only relieved from liability to the extent to which the shipowner had obtained a lien for freight on the cargo, and that they were liable to pay the difference between the bill of lading freight and the lump freight.—*Hansen v Harrell Brothers*, L R [1894] 1 Q B 612
- (iv) **C. A.** *Contract for Sale—Liability for Freight—Merchant Shipping Act 1862* 66 72 The statute above mentioned preserves the liability which (apart from the deposit made under its provisions) would have been incurred before the Act by an agent for sale to pay the bill of lading freight upon delivery of goods consigned to him for sale.—*James v White & Carter* L R [1894] 1 Q B 483, 42 W R 290
- (v) **P. D.** *Contract for Employment—Mortgage at Notice—Sale by—Purchase with Notice—Effect of Contracting*—The owner of a ship entered into a contract with the defendant for her employment for a term of years. He then mortgaged her to persons who had no notice of the contract. He made a second mortgage to the plaintiff who had notice. The first mortgagees sold her under their power of sale to the plaintiff. The defendant who had possession of the ship's certificate of registration refused to deliver it to the plaintiff and claimed that the ship was bound by the contract. *Held* that the plaintiff was entitled to have the certificate delivered to him and that the first mortgagees having taken their mortgage without notice of the contract, were entitled to sell the ship free from the same and that the plaintiff was entitled to take the position of his vendors.—*The Celtic King*, 63 L J P 37
- (vi) **C. A.** *Insurance—Collision Clause—Proviso*—The plaintiffs' ship collided with another ship in the river Scheldt and the latter was sunk. The Belgian authorities removed the wreck and charged the owners with the expenses. The plaintiffs paid half this sum to the owners of the sunken ship after a reference in the Admiralty registry which followed an admission that both ships were to blame. The plaintiffs sued their insurers on the collision clause of their policy to recover such payment. The clause contained the proviso that this clause shall in no case extend to any sum which the assured may become liable to pay or shall pay for removal of obstructions under statutory

powers consequent upon such collision." *Held*, that the proviso applied, and that the insurers were not liable.—*The North Britain*, L.R. [1894] P. 77; 63 L.J. P. 33; 74 L.T. 210; 42 W.R. 243.

- (i.) **P. D.—Insurance—Freight—Valued Policy.**—The plaintiffs, owners of a ship, then on an outward voyage, took out a policy of insurance on freight, at an agreed valuation, in the said ship on her homeward voyage, the insurance to commence from the loading of the cargo. The vessel met with an accident on the outward voyage, and was detained at the port of discharge for repairs. Some cargo was engaged before the date of the policy for the homeward voyage, part being loaded at the original rate of freight, and the remainder cancelled. More cargo was shipped at lower rates of freight, and the vessel sailed with a full cargo. She was burnt on the homeward voyage, and the freight lost. *Held*, that the policy covered the freight at risk, and that the valuation was binding on both parties with regard to what was actually at risk under the policy.—*The Main*, 70 L.T. 247.
- (ii.) **C. A.—Insurance—General Average—Foreign Adjustment—Particular Average.**—Where a policy contains the clause "general average as per foreign statement," the assured cannot recover as particular average items of expenditure included as general average in the foreign statement. In such a case all expenses which are decided by the foreign adjuster to be general average must be so treated, not only as between the respective owners of ship and cargo, but also as between them and their respective underwriters.—*The Mary Thomas*, L.R. [1894] P. 108; 63 L.J. P. 49.
- (iii.) **P. D.—Necessaries—Action for—Priorities.**—Where several actions *in rem* for necessaries have been commenced, and the ship having been sold, the proceeds are not sufficient to pay all the claimants, the plaintiff in the first action has no priority; but the proceeds will be held *pro rata* for, at least, all the creditors of the same class, who assert their claims before any unconditional decree. *Semble*, that a decree in unconditional terms would, so long as there are any funds in the hands of the Court, be modified so as to let in others, who, without laches, put forward claims of a like character.—*The Africano*, L.R. [1894] P. 141; 70 L.T. 250; 42 W.R. 413.

### Solicitor:—

- (iv.) **Q. B. D.—Costs—Taxation—Agreement in Writing—Payment.**—The plaintiff's solicitor settled an action, in which the plaintiff had obtained judgment, but the defendant had appealed, on the terms of the payment by the defendant of £210 damages and £120 costs. He explained the terms to the plaintiff and paid her £210. She signed a document by which she agreed to allow him the sum already paid by her to him for costs as an equivalent for the abatement in costs which he had made to the defendant. Such sum amounted to £55 16s. The solicitor delivered her a cash account containing on the credit side £330 and £55 16s., and on the debit side £210, and "amount of agreed costs" £175 16s., i.e., £120 and £55 16s. *Held*, that the plaintiff was not entitled to an order for taxation, for the document amounted to an agreement in writing within the Attorneys and Solicitors Act, 1870, s. 4, and the transaction amounted to payment within the meaning of 6 & 7 Vict., c. 73, s. 41.—*In re Thompson*, *ex p. Baylis*, L.R. [1894] 1 Q.B. 462; 63 L.J. Q.B. 187; 70 L.T. 238.
- (v.) **C. A.—Costs—Taxation—Costs of Taxation—Special Circumstances—Solicitors Act, 1843, s. 37.**—A solicitor delivered to two surviving trustees a bill, the items of which amounted to £44 2s. 8d., but at the foot of the bill was written "By allowance £7 2s. 8d.," thus reducing

the amount to £37. More than one-sixth of the larger amount was disallowed on taxation, but the taxing-master certified that he had disallowed many items as being for work which the trustees ought to have performed themselves, but that it had been pointed out to him that, owing to friction between the trustees, the deceased trustee had several times refused to meet his co-trustees, and had expressly instructed the solicitor to do the work in respect of which the disallowed items had been charged, and that he was of opinion that under the circumstances the solicitor ought to be allowed the costs of taxation. *Held*, that the bill ought to be taxed as a bill for £44 2s. 8d., and that the solicitor ought to be allowed the costs of taxation.—*E. p. Short*; in *re Mackenzie*, 69 L.T. 751.

- (i.) **Ch. D.**—*Taxation—Order of Course—Abortive—Second Order.*—Where an order of course for taxation has become abortive, owing to delay, it is irregular for the client to obtain a second order of course, *ex parte*, and without mention of the first order. Another order for taxation can only be obtained upon a special application and on the terms of paying the solicitor's costs of the former proceedings.—*In re Taylor, Sons, and Tarbuck*, L.R. [1894] 1 Ch. 503; 70 L.T. 161; 42 W.R. 329.
- (ii.) **Ch. D.**—*Lien for Costs—Marriage Settlement.*—A solicitor, preparing a marriage settlement upon the instructions of the husband, and subsequently retaining possession of it, has no lien upon it as against the trustees for his costs, but is bound to deliver it to them at their request.—*Bowker v. Austin*, L.R. [1894] 1 Ch. 556; 63 L.J. Ch. 205; 70 L.T. 91; 42 W.R. 265.
- (iii.) **Q. B. D.**—*Professional Misconduct—Borrowing from Client just of Age.*—A solicitor borrowed the sum of £69,600 from a client who had attained the age of twenty-one just before the first transaction between them. The client had no independent advice, and left the conduct of his affairs entirely to the solicitor. *Held*, that though the solicitor had not been guilty of actual dishonesty, he had been guilty of such professional misconduct as to require his suspension from practice for two years.—*In re A Solicitor*, L.R. [1894] 1 Q.B. 254; 70 L.T. 27; 42 W.R. 237.
- (iv.) **C. A.**—*Trustee—Professional Charges—Opening Settled Accounts.*—S. and S., the trustees and executors of a will, who were solicitors, and were authorised to charge for professional business done for the estate, wound up the estate and sent an account to the five residuary legatees, inviting them to call and receive their shares, and offering any explanations they might require. The account was not complicated, and contained an item "Paid to Messrs. S. & Co. costs, &c." The residuary legatees signed the account, received cheques for their shares, and executed a release to the trustees. S. and S. did not inform them that they were entitled to have a bill of costs delivered and taxed. Nine years afterwards some of the residuary legatees sought to have the release set aside, and a bill of costs delivered and taxed. *Held*, that though S. and S. ought to have informed the legatees that they were entitled to have a bill of costs delivered and taxed, the omission to do so was not a sufficient ground for opening a settled account; that in order to do so it was necessary to show that injustice would be done by allowing the account to stand; that if excessive charges had been shewn, the account must have been opened; but that as the evidence failed to shew such excessive charges, the account ought to be allowed to stand.—*Lambert v. Still*, L.R. [1894] 1 Ch. 73; 63 L.J. Ch. 145.
- (v.) **C. A.**—*Undertaking—Enforcement—Undertaking to Repay Costs if Appeal Succeeds.*—Where execution is stayed pending an appeal upon the terms of the appellant paying the taxed costs to the respondent's

solicitor, the latter giving his personal undertaking to repay them if the appeal should succeed, the undertaking can, in the event of the appeal succeeding, be enforced in a summary manner, although execution is stayed pending a further appeal.—*Swyny v. Harland*, 70 L.T. 227; 42 W.R. 297.

### Tithe :—

- (i.) **C. A.**—*Rating of Owner—Tithe Act, 1891—Arrears of Rates Due before Act—Reduction from Rent-charge Accruing after Act.*—Decision of Q. B. D. (see Vol. 18, p. 136, v.) affirmed.—*Roberts v. Potts; Jones v. Cooke*, L.R. [1894] 1 Q.B. 213; 42 W.R. 294.

### Trade Mark :—

- (ii.) **Ch. D.**—*Descriptive Word—"Person Aggrieved"—Patents, &c., Act, 1883, s. 10, sub-s. 1 (d) (e).*—*Held*, that "Emollicolorum" as applied to a preparation for rendering leather supple and waterproof, is a descriptive word, and not a fancy word, and is not capable of registration as a trade mark. *Held*, also, that the applicants, who manufactured a dressing for leather, and might be hampered in their business by the registration of the word, were "persons aggrieved."—*In re Talbot's Trade Mark*, 70 L.T. 119.
- (iii.) **C. A.**—*Descriptive Word—Patents, &c., Acts, 1883, s. 64, sub-s. 1 (c); 1888, s. 10.*—*Held*, that "Somatose," as applied to an article of concentrated food, was a descriptive, and not an invented word, and not capable of registration.—*In re Trade Mark Application of Farbenbriken, Vormals, Friedr. Berger & Co.*, 70 L.T. 186.
- (iv.) **H. L.**—*Old Mark—User—Persons Aggrieved—Patents, &c., Act, 1883, ss. 64, 90.*—Decision of C. A. (see Vol. 19, p. 27, i.) affirmed.—*Powell v. Birmingham Vinegar Brewery Co.* L.R. [1894] A.C. 8; 63 L.J. Ch. 152; 70 L.T. 1.
- (v.) **Ch. D.**—*Foreign Company—Fancy Name—Similar Name—Foreign User—Absence of Fraud.*—In the absence of fraud a company is not entitled to restrain a foreign company from trading in England under the name conferred upon it by the Legislature of the country in which it is incorporated, though the name is a fancy name and similar to that of the English company, provided it is used without any modification. Where a foreign company bearing a name so conferred was trading in England, and disclaimed any dishonest intention against an English company bearing a similar name, but in the documents circulated among its agents its name was used in abbreviated forms the user of which might lead to the injury of such English company, and the instructions to such agents did not expressly forbid such user, the Court, in order to give the foreign company an opportunity of giving instructions to its agents not to use such abbreviated or modified forms of its name, ordered a motion for an interlocutory injunction to restrain such modified user of the incorporated name to stand over to the trial of the action.—*Saunders v. The Sun Life Assurance Company of Canada*, L.R. [1894] 1 Ch. 537; 63 L.J. Ch. 247; 69 L.T. 755; 42 W.R. 304.
- (vi.) **C. A.**—*Register—Rectification—Calculated to Deceive—Person Aggrieved—Patents, &c., Act, 1883, s. 90.*—Decision of Ch. D. (see Vol. 19, p. 63, v.) affirmed.—*In re Trade Mark of La Société Anonyme des Verreries de l'Etoule*, 70 L.T. 295.

**Tramway:—**

- (i.) **Q. B. D.**—*Purchase by Local Authority—Basis of Valuation.*—In an arbitration under the London Street Tramways Act, 1870, to fix the price at which certain tramways were to be purchased by the London County Council, the referee refused to consider the profits of the tramways, or their rental value considered as let, or capable of being let, to a tenant. *Held*, that he was wrong, as the value should be assessed by ascertaining the rental value of the undertaking, and not by taking the cost of construction less depreciation.—*In re Arbitration between the London County Council and the London Street Tramways Co.*, 70 L.T. 97.

**Trespass.**—See Partition, p. 79, iii.

**Trustee:—**

- (ii.) **Ch. D.**—*Appointment of New—Personal Representatives of Surviving Trustee—Probate—Special Executors—Conveyancing Act, 1881, s. 31.*—P. appointed two persons trustees of his will. In 1881 one of the trustees died, and a sum of consols, part of the estate, became vested in the survivor. The survivor appointed A. and B. his general executors, and C. and D. executors for the purpose of the trust. A. and B. obtained a grant of probate, and by deed appointed C. and E. to be trustees of P.'s will. C. and D. obtained grants of probate for the purpose only of the trusts of P.'s will. *Held*, that the will of the surviving trustee was not an execution of the powers of the section above-mentioned, but that as A. and B. had obtained a general grant of probate of their testator's will they were his personal representatives, and that their appointment of C. and E. as trustees was valid. Ordered that D. should transfer his interest in the consols to C. and E.—*In re Parker's Trusts*, 70 L.T. 165.
- (iii.) **C. A. & Ch. D.**—*Breach of Trust—Fraudulent Trustee—Liability of Innocent Trustee.*—An action by the beneficiaries under a will against the executors and trustees, to compel them to make good a loss of part of the estate. One of the trustees who had been allowed by his co-trustees to convert certain registered railway bonds into bonds to bearer for the purpose of sale, had converted them to his own use. *Held*, that the trustees were doing their duty in selling the bonds; that the sale was a matter which might be properly entrusted to one of several trustees; and that the trustees had not been guilty of negligence in allowing one of their number to convert the bonds into bonds to bearer, and could not be made liable.—*Gasquoine v. Gasquoine*, L.R. [1894] 1 Ch. 470; 69 L.T. 822; 70 L.T. 196.
- (iv.) **Ch. D.**—*Breach of Trust—Investment—Deposit—Liability of Retiring Partner—Limitations.*—By will a testator empowered his trustees to invest moneys by depositing them with the firm of B., T. & Co. At the death of the testator a sum belonging to him was deposited with the said firm, which then consisted of W. and H. The trustees left it so deposited, and added other sums to it. H. died, and W. admitted new partners into the firm. W. afterwards retired, and the continuing partners by deed agreed to pay the debts of the firm, including that due to the testator's trustees. The continuing partners paid interest on the debt until the year 1891 in the name of the firm B., T. & Co. *Held*, that the trustees were liable in the event of loss, for not having got in the debt when the original firm was dissolved by the death of H., the authority being only to deposit money with the firm as constituted at the testator's death. *Held*, also, that the statute did not run in favour of W., the payment of interest by the continuing partners being a payment for or on behalf of him.—*Tucker v. Tucker*, 68 L.J. Ch. 223; 70 L.T. 127; 42 W.R. 266. •

- (i.) **Ch. D.—Custody of Title Deeds and Securities.**—Where trust funds have been invested on a mortgage of a building estate, the development of which will involve frequent reference to the title-deeds, the trustees are justified in depositing them with their solicitor, instead of keeping them in their exclusive possession. *Semble*, that as a general rule, convertible securities, such as bonds payable to bearer, ought not to be left in the custody of a solicitor or agent.—*Field v. Field*, L.R. [1894] 1 Ch. 425; 69 L.T. 826; 42 W.R. 346.

### Vendor and Purchaser:—

- (ii.) **Ch. D.—Conveyance of Land—Adjoining Road—Soil of Roadway—Presumption of Law—Rebuttal.**—The presumption of law that a conveyance of land adjoining a public road passes the soil of the road "*ad medium filum viae*," is rebutted by circumstances shewing that the road possesses a value to the conveying party apart from its user as a way, and by references in the conveyance shewing that the road is to be regarded as a parcel of land distinct from the parcels expressly conveyed.—*Pryor v. Petre*, 63 L.J. Ch. 132; 69 L.T. 795.
- (iii.) **Ch. D.—Leaseholds—Title—Sale by Executor—Presumption.**—A contract of sale of leaseholds stipulated that the title should commence with a lease of the 29th September, 1852. It stated that the lease was granted in consideration of the surrender of a term, and required the purchaser to assume that all necessary parties concurred in the surrender, and not to require an abstract or the production of the surrendered term, or of any title before the lease, and not to make any objection or requisition in connection therewith. The abstract shewed that the lease was granted to T. as executor of P. in consideration of a surrendered term, and that, by deed of 7th May, 1878, T., who did not appear on the deed as executor, and entered into ordinary covenants for title, assigned to the vendor's predecessor in title. *Held*, that an objection by the purchaser, that the lapse of twenty-six years between the lease and the sale by T. *prima facie* destroyed T.'s title to sell, could not be sustained. *Held*, also, that the frame of the deed of 1878 was insufficient to rebut the presumption that T. was selling as executor. *Held*, therefore, that the abstract disclosed a *prima facie* title according to the contract, and that the purchaser was not entitled to have an abstract of P.'s will, or to require proof of T.'s powers to sell and convey.—*In re Venn and Furze's Contract*, 70 L.T. 313.
- (iv.) **Ch. D.—Municipal Corporation—Building Scheme—Restrictive Covenants—Municipal Corporations Act, 1882, s. 109.**—A municipal corporation sold a plot of land, being part of its land which was subject to a building scheme. The conditions of sale provided that the purchasers should enter into restrictive covenants. The consent of the Treasury was obtained to the sale, but the memorial asking therefor did not state the conditions of sale. The conveyance contained restrictive covenants on the part of the purchaser, but no corresponding covenants on the part of the corporation. *Held*, that if the corporation had been a private owner it would have been bound by the scheme as regards its other land subject thereto, in spite of the absence of covenants; but that, as the consent of the Treasury to the scheme had not been obtained, the corporation were not bound by the scheme as regards its other land subject to the scheme but not included in the conveyance.—*Davis v. Corporation of Leicester*, 42 W.R. 362.
- (v.) **Ch. D.—Specific Performance—Contract by Letter—Negotiation.**—The Court will not enforce specific performance of a contract by letter in which the main heads of agreement are specified, but which provides

that the offer is made subject to the approval by the intending purchaser of "a detailed contract to be entered into."—*Page v. Norfolk*, 70 L.T. 23.

**Voluntary Assignment:—**

- (i.) **Ch. D.**—*Assignment by Wife to Husband—Parol Evidence to shew Nature of Transaction—Statute of Frauds.*—A wife purchased leaseholds out of her separate estate. She soon after executed what purported to be a voluntary assignment to her husband, who mortgaged the premises. It was shewn by parol evidence that the assignment was made to enable him to borrow money, and that subject to this it was intended that the premises should remain the wife's property. The husband afterwards died. *Held*, that as the husband, if he had refused to reconvey the equity of redemption to his wife, could not have set up the Statute of Frauds, his creditors claiming under him were in no better position; and that therefore the equity of redemption belonged to the wife.—*Davis v. Whitehead*, 70 L.T. 314.

**Will:—**

- (ii.) **Ch. D.**—*Construction—Accumulation—Thelluson Act.*—A testator bequeathed several annuities to be paid out of the income of his personal estate, and directed that the surplus income should be accumulated till the death of the last surviving annuitant. He bequeathed the residue of his personal estate "in trust to pay and divide the same into the several charities hereinafter named, according to the amounts set after their respective names," and then followed the names of five charities, with the sum of £100 against each. There was a large surplus of income after providing for the annuities. In an action to administer the estate, it was decided that the charities were entitled to the whole of the surplus, but without any decision as to the future rights of any one to the accumulations, which were directed to be continued. Two of the annuitants having died, the next-of-kin petitioned for payment to them of the accumulations made since the expiration of 21 years from the testator's death. *Held*, that the charities were entitled to the whole of the accumulations.—*Harbin v. Masterman*, 69 L.T. 788.
- (iii.) **C. A.**—*Construction—Annuities—Clear of Deductions—Income Tax*—Testator gave property on trust to pay annuities "clear of all deductions whatsoever except income tax." By codicil he directed that "every interest under my will shall be free of legacy duty and every other deduction." *Held*, that the annuities must be paid free of income tax.—*Williams v. Mason*, 70 L.T. 115; 42 W.R. 229.
- (iv.) **C. A.**—*Construction—Request of Arrears—"Outgoings."*—Devise of hereditaments to A, and bequest to A. of all arrears of the rents of such hereditaments which should be due at the testator's death, and all proportions to become due after his death of rents accruing due at his death, followed by a direction that "all outgoing of the said hereditaments properly chargeable against such arrears and proportions, and not discharged" in the testator's lifetime should be paid out of such arrears and proportions. *Held*, that the outgoing properly chargeable extended to all such expenditure upon the estate, as must be deducted to ascertain the net rental, and included not only rates, taxes, and tithes, but also the agent's salary and commission, and sums paid or payable before the testator's death for repairs.—*Viscount Wolmer v. Forester*, L.R. [1894] 1 Ch. 164; 63 L.J. Ch. 115; 69 L.T. 807.



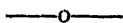
- (i.) **Ch. D.—Construction—Children—Illegitimate.**—A testator bequeathed his residuary estate in trust for his four children by name, including "A. J. H., the wife of J. H.," and declared that the share of A. J. H. should be in trust for A. J. H. for life, and "during any coverture" without power of anticipation, and after her death in trust for "the children or child of A. J. H." J. H. had married the testator's sister, and after her death, in the testator's lifetime, went through the ceremony of marriage with A. J., the testator's daughter, and had had a child by her. The testator knew these facts. After the testator's death J. H. had other children by A. J. H. *Held*, that the child born before the date of the will was entitled to the share of A. J. H.—*Harrison v. Higson*, L.R. [1894] 1 Ch. 561.
- (ii.) **Ch. D.—Construction—Devise of Land—Condition Requiring Residence—Infant.**—Devise of mansion-house and land to A. for life, remainder to the plaintiff in tail. There was a gift over in case any person who by virtue of the limitations in the will should come into possession of the estate should "refuse or neglect" to reside in and occupy the mansion-house for nine months in every year. At the time of A.'s death the plaintiff was an infant. *Held*, that the gift over could not take effect during his infancy—*Partridge v. Partridge*, L.R. [1894] 1 Ch. 351; 63 L.J. Ch. 122; 70 L.T. 261.
- (iii.) **P. C.—Construction—Estate for Life or in Fee**—A testator, by will made in 1821, after various bequests of realty and personality, proceeded, "I do give and bequeath unto my daughter A. fifty acres of land, being part of one hundred acres situated on the P. road, known as E. farm, and to my daughter E., fifty acres of land, being the remainder of the above-named hundred." Then followed the words "and whose names are in the schedule named, and property specifically mentioned to each of their respective names." The schedule contained the names of the various devisees, but not the particulars of the property devised. *Held*, that the words mentioning the schedule were words of reference, not of gift, and that the daughters only took life interests.—*Hull v. Brown*, 70 L.T. 175.
- (iv.) **C. A.—Construction—Falsa Demonstratio—Limitatio Vera.**—S. devised to his wife during widowhood, "my residence, called S. House, and premises thereto, as the same are now occupied by me." Some years before the date of the will he had let to his two sons for business purposes an office in the yard of S. House, and the stable and coach-house belonging to the house, except a room on the first floor of the coach-house to which the only access was through the house, and the sons were in occupation at his death. *Held*, that the reference to occupation could not be rejected as falsa demonstratio, and that the devise included the room over the coach-house, but not the office, stable, or coach-house.—*Seal v. Taylor*, L.R. [1894] 1 Ch. 316.
- (v.) **Ch. D.—Construction—Legacy—Demonstrative or Specific.**—A legacy of "800 pounds invested in 2½ consols" held specific, not demonstrative, on consideration of the context of the will.—*Pratt v. Pratt*, L.R. [1894] 1 Ch. 491.
- (vi.) **Ch. D.—Legacy—Residue—Not otherwise disposed of**—A testator gave legacies, and then gave and devised all his real and personal estate not otherwise disposed of. *Held*, that the legacies were payable out of the mixed fund of realty and personality.—*Baenden v. Cresswell*, 42 W.R. 235.
- (vii.) **P. D.—Probate—Executor—Misdescription—Parol Evidence—Declarations of Testator**—A testator appointed as executor "Robert Taylor, of W., in the parish of B., bootmaker." There was no Robert Taylor living at W. in the parish of B., but there was a J. A. Taylor, a bootmaker, living there, and there was a Robert B. Taylor, also a boot-

maker, living at H., in the same parish. *Held*, that evidence might be given to shew that the testator had little acquaintance with R. B. Taylor, but was a friend of J. A. Taylor; and probate was granted to J. A. Taylor. *Seemle*, that evidence of declarations of the testator was not admissible.—*In the goods of Chappell*, L.R. [1894] P. 98; 70 L.T. 245.

- (i.) **C. A.**—*Probate—Onus Probandi*.—Whenever circumstances exist which excite the suspicion of the Court, it is for those who propound a will to remove that suspicion, and to shew affirmatively that the testator knew and approved of the contents of the document, and it is only when this is done that the onus falls on the opponents to prove their case against the will.—*Tyrell v. Panton*, 42 W.R. 343.
- (ii.) **P. D.**—*Probate—Signature on First Page of Will*.—Where a will was on two pages of a sheet of paper, the first page containing the disposing parts of the will, and the signature and attestations being at the bottom of the first page, *held*, that probate should be granted of the first page only.—*In the goods of Anster*, 63 L.J. P. 61.
- (iii.) **P. D.**—*Probate—Testamentary Papers—Incorporation*.—The testator executed a document in the presence of two attesting witnesses. The document appointed no executors and contained no bequests, but referred to "the enclosed papers, numbered 1, 2, 3, 4, 5, and 6" as containing his testamentary wishes, and recited that they had been signed by himself in the presence of the witnesses, who, however, said that they had not seen any of them. They said that the testator asked them to witness his signature to his will, at the same time pointing to a drawer in the table and saying, "The will is in this drawer." The papers bore various dates antecedent to the attested document. *Held*, that as the documents were not clearly identified with the description given of them in the attested papers, they could not be incorporated therewith; and that as the attested paper would be inoperative without them, probate of all the documents must be refused.—*In the goods of Garnett*, L.R. [1894] P. 90, 70 L.T. 37.
- (iv.) **P. D.**—*English Will—Russian Will of Real Estate—Deed of Covenants by Russian Devisees—Documents Admissible to Probate*.—A testator domiciled in England executed a will and codicils dealing with his English property and Russian personal property, a will dealing with real property in Russia, and a deed of covenants by the devisees of the Russian real property, by which they covenanted to sell the same and to hand over the proceeds to the English executors. This deed was executed before the last codicil, which recited that it was intended that it should be executed. *Held*, that the Russian will and the deed of covenants ought not to be included in the English probate.—*In the goods of Tamplin*, L.R. [1894] P. 39; 42 W.R. 287.



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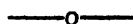
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# THE LAW MAGAZINE AND REVIEW.

No. CCXCIII.—AUGUST, 1894.

## I.—THE STATE AND THE FINANCIAL SITUATION IN INDIA.

THE events of the last few months have placed beyond the pale of doubt the fact that the Finances of India are not only in a thoroughly unsound and dangerous condition, but that they are on a rapid decline, and that no efforts to arrest their downward course are made by those whose duty it is to provide for the safety of the State. The semi-official papers no longer attempt to disguise the situation. Thus, the *Pioneer*, for May 24th last, said:—  
“The issue of a new Sterling loan of £6,000,000 is an indication that the financial situation has gone from bad to worse since Mr. Westland framed his budget. In his Statement, the Finance Minister announced that it was not intended to make any addition to the permanent debt of the country. Council’s bills, it was hoped, would be sold to the extent of £17,000,000 in the twelve months, while temporary loans would be raised to the extent of £8,300,000, out of which the Secretary of State was to use £6,000,000 to pay off the temporary borrowings of last year. There would have been no reason for preferring the expedient of short dated bills to a regular loan had there not been a hope that, within the next twelve months or so, the situation would improve so materially that temporary borrowings could be made good, and a regular loan dispensed with. The step now taken shews that

"this hope has had to be abandoned. The strain of the  
 "new six millions loan will be felt at the beginning of next  
 "year, when provision has to be made for the payment of  
 "the interest in Sterling with shilling rupees. In what  
 "fathoms of financial bog we may find ourselves in twelve or  
 "eighteen months it is literally frightful to contemplate."

Turning to this country, we find that the *Times*, on June 25th last, contains, under the heading of "Indian Affairs," the following statement, which deserves special attention:—"Discursive references to bimetallism and  
 "pious hopes of a bimetallic concert of nations are a mere  
 "paltering with the situation. We strongly insisted on the  
 "evils of the absence of individual responsibility which is  
 "an ever-present danger to Indian finance. As we pointed  
 "out on March 5th, the essence of effective responsibility  
 "is that advisers should stand or fall by the advice which  
 "they give. The test of effective responsibility is their  
 "resignation when their advice is rejected. Amid all the  
 "bad Indian finance of the past two years, there is not a  
 "single person to whom the test could have been applied.  
 "The views of the Finance Minister have differed from  
 "those of the Viceroy, and the views of both have been  
 "disregarded by the Secretary of State. The Secretary of  
 "State, in his turn, is responsible to his colleagues, not for  
 "good finance, but for adjusting Indian finance to the  
 "Parliamentary convenience of the Ministry at home."

Thus, while the *Pioneer* points to the fearful depths into which we are being drawn, the *Times* clearly shews that the Indian Secretary of State, subjected as he is to the influence of the Ministry at home, is powerless to stave off the danger, although that danger has been created by his own action, as supreme controller of Indian affairs. This startling avowal, moreover, is unaccompanied by any suggestion as to how the vessel of the State is to be saved from the wreck of bankruptcy. The man at the helm, whose

personal safety is provided for, is seen to be steering straight for rocks and shoals, and common sense bids that he should at once be removed, and the vessel be placed under the control of men personally interested in her safety; but not a voice is raised for a change so obviously and so urgently needed. The two hundred millions of British subjects whose fortunes are thus jeopardised, have no voice in the matter, while the influential minority at home, who might save the State, seem blind to the peril to which they and their Indian fellow-subjects are exposed.

The line of conduct which the Government have latterly pursued with regard to the finances of India, indicates an intention to proclaim bankruptcy, rather than submit to the hard ordeal which alone could save the credit of the State, namely, the exercise of strict retrenchment and economy, the avowal of error, and the acceptance of unpalatable reform. While it is earnestly to be hoped that no such calamitous intention is entertained, the disquieting supposition acquires considerable strength from other parts of the Article in the *Times*, where the writer, after referring to the heavy gold obligations contracted by the Indian Government, says: "How those obligations are to be met, and how those menaces of insolvency are to be averted, are questions which demanded an answer in the last two Indian budgets, and they are questions to which neither of the last two Indian budgets attempted to reply." The Article then goes on to shew that no satisfactory reply was possible, and forcibly demonstrates this fact in its concluding paragraph. Referring to the lecture which the late Indian Finance Minister delivered in the City on the 15th June last, the writer says: "Sir David Barbour (who has regained his right to speak his mind) warns the British nation that the Government of India is at present in a position of great financial difficulty. Passing over currency devices and palliatives in regard

“to which he is more or less doubtful, he comes to  
 “the plain and immediate duties which that position  
 “imposes on the Indian Government. The first is to  
 “‘enforce strict economy.’ This the Government of India  
 “cannot do, so long as it is compelled to defray all sorts of  
 “charges of supervision and control in England, which no  
 “other Dependency or Colony of Great Britain would be  
 “called to pay. The second duty of the Indian Government  
 “is to ‘manage its financial affairs with greater forethought  
 “and prudence.’ This it cannot effect so long as there is no  
 “individual responsibility for their management, and the  
 “ultimate decision in financial measures of the greatest  
 “importance is avowedly given not in the interests of  
 “the Indian taxpayers. Its third immediate duty, according  
 “to Sir D. Barbour, is to ‘avoid at all hazards any increase  
 “of the home charges and of its Sterling liabilities of what-  
 “ever kind.’ This it cannot avoid so long as the current  
 “Indian payments in England continue to be met, in whole  
 “or in part, by fresh issues of Sterling loans.”

If we assume the correctness of the statements contained in the *Times* and the *Pioneer* (neither of those papers being likely in any degree to exaggerate the shortcomings of the Government), the situation may be summarised as follows:—

The Secretary of State, who exercises supreme control over the Indian administration, has, for years, sanctioned expenditure greatly in excess of the revenue, and raised loans for meeting the deficit. ••

A great deal of this expenditure has been incurred, not in supplying Indian wants, but in meeting the Parliamentary convenience of the Ministry at home—that is, in assisting the British Cabinet to acquire Parliamentary votes for its support. ••

The Indian debt has thus been, and is still being, unfairly increased; and the Secretary of State is unable to arrest that evil course, owing to the peculiar system of

government imposed on India—a system which has destroyed individual responsibility, and made it impossible for the head of the Government to enforce strict economy, to manage financial affairs with greater forethought and prudence, and to avoid increasing the home charges and Sterling liabilities of the Indian Government.

Reform, therefore, has become urgent; every hour's delay aggravates the situation and adds to the difficulty of rescuing the finances from their perilous condition. The system of government which produced this crisis must obviously be abolished, and an influence be brought into existence (as advised by the late John Stuart Mill in 1858) that will protect the Indian revenue against illegal demands, such as those which the present system has encouraged and supported. But who is to exercise this protective influence? The duty was assigned by Act 106 of 1858 to a trusted adviser of the Queen; and the plan has proved a disastrous failure, simply because the powerful instinct of self-preservation led the Secretary of State to sacrifice Indian interests to the safety of the Cabinet on which his official existence depends. On the other hand, experience and human instinct urge that those who contribute to the revenue raised for their benefit, are best qualified to decide how its expenditure may effectually accomplish its purpose. This brings us face to face with Popular Representation—a system which has ameliorated the condition of every society where it has been introduced, but which the Anglo-Indian official has denounced as unsuitable for India.

So long as the Indian populations had faith in our promises and good intentions, it would, perhaps, have been unwise to initiate a revolutionary measure and concede rights which were not claimed; but great changes have occurred during the last thirty-four years. Our faith solemnly pledged to our Indian fellow-subjects, and our Treaties as solemnly entered into with our Indian allies,

have deliberately been violated by us.\* Our Law Courts have been converted into instruments for enforcing illegal and groundless claims of the Government;† and the people are still vainly appealing to our Proclamation of 1858, when our Gracious Queen, speaking in the name of the British nation, said:—"We hold ourselves bound to the natives of our Indian territories by the same obligations of duty which bind us to all our other subjects, and these obligations, by the blessing of Almighty God, we shall faithfully and conscientiously fulfil."

In short, we no longer possess the confidence of the people, and a disposition is spreading amongst them to combine against our action and our spurious Indian legislation whenever these are considered oppressive and unjust. Western education, moreover, has made rapid progress all over India; political associations have been formed in every Province, claiming for the people the right to participate, to a reasonable extent, in the administration of their country; and Popular Representation has, for the last twelve years, been actively and widely discussed by the educated classes, as offering the only legitimate means by which the people could obtain justice. The situation, therefore, has very materially changed since 1858; and while the opinion of the Anglo-Indian official must always be an important factor in the adoption of reform, views based on a state of things which no longer exists cannot safely be accepted as a guide in the altered conditions which now prevail.

\* *Law Magazine and Review*, No. CCLXXXVIII., May 1893, p. 164, *The Bengal Tenancy Act*; also No. CCXC., November, 1893, p. 97, *Our Indian Feudatories, &c.*

† *Law Magazine and Review*, No. CCLXXXIV., May, 1892, p. 183, *The Fusion of the Executive and Judicial Powers in India*; also No. CCLXXXV., August, 1892, p. 259, *Judicial Independence in India*.

The introduction of Popular Representation into the Government of India, would need much circumspection and forethought. In other countries the system has encouraged the masses of the people to invade the legitimate rights of the industrious and the thrifty, and this has occurred especially in communities where numbers formed the main basis of the representation. The object of a Parliament being to allow the people a voice in the expenditure of the revenue paid by them, equity demands that each elector's influence should be proportioned to his contribution, and that his contribution should fairly represent his stake or interest in the country. It must have been in view of some such principle that the fiscal element was introduced in the qualification of electors; and a careful adherence to that principle might save us in India from the troubles which have arisen elsewhere from its imperfect application. The Electoral body might also with advantage be confined to the classes who are capable of understanding the aim and the benefits of Popular Representation, provision being simultaneously made for extending the franchise with the spread of education.

In devising means for saving India, from the ruin with which she is now threatened, it should, at all events, be carefully borne in mind that her critical condition is the result, as the writer in the *Times* so clearly demonstrates, of her pernicious system of government, in which the exercise of power being released from its legitimate responsibility, reckless extravagance receives powerful encouragement, and economy becomes practically impossible. The system contains, in fact, a germ of destruction which no patching-up, no change of form, no partial concession to principle, can eradicate; it must be entirely abolished before India can be liberated from the incubus under which she is being crushed. It appears, however, that the Indian authorities,



in order to prolong the period of irresponsible power, are about to demand that the British Government should guarantee the debt of India, and this demand is to be accompanied with the threat that, unless it be conceded, our Indian Empire must crumble and fall into dissolution.

The *Pioneer*, for June 15th last, says:—"The most astonishing fact about the present situation is that the credit of the country for borrowing purposes keeps up as it does. . . . We are paying our way at home—as regards, amongst other charges, the interest on money borrowed—by borrowing more. By degrees it must become perceptible that, no matter how exalted the morality of the Indian Government may be, there may come a time when the Indian Government will not be able to act up to the principles on which till now its credit has reposed. New difficulties will be found in placing on such terms as we have been used to, loans that depend for their security on the resources of the Indian Government. Then will borrowing become possible only with the guarantee of the British Government, and the Government of England will have to carry on the Indian administration or proclaim a dissolution of the Empire."

To hear of the exalted morality and the principles of a Government who have deliberately and persistently committed the unprincipled act of appropriating and wasting the security they had pledged to their creditors, sounds strange; but criticism in the present conjuncture can be of little use; and if the attempt, foreshadowed in the above extract, to prolong irresponsible government in India, is to be frustrated, opposition must be prompt and energetic, seeing that the attempt to obtain the guarantee will probably receive the support of several influential classes, namely:—

Those who have invested their money in Indian Securities;

The political supporters of the existing Ministry, and of previous Indian Secretaries of State, who misused the power intrusted to them ;

Indian officials, especially in the higher ranks, who doubtless perceive that the reduction of their salaries and the abolition of dispensable appointments has become imminent ;

Lastly, all who derive profit from commercial and financial transactions with the Indian Secretary of State, either for the supply and shipment of stores or for other requirements of the Indian Government.

On the other hand, the guarantee would impose fresh liabilities on the British taxpayer ; and the working classes, which form the bulk of our constituencies, would certainly not consent to bear additional taxation for the benefit of the classes just mentioned. It is to be feared, however, that the measure might be delusively represented as constituting a merely nominal risk ; and that some boon or concession, simultaneously offered to the electors, might weaken their opposition to the proposal. It is important, therefore, that accurate information on the subject should be imparted to the British public as early as possible.

To India, the British guarantee, by enabling irresponsible government to be prolonged (although its pernicious character has been exposed and is now universally admitted), would prove an overwhelming misfortune. Her attenuated resources would be further reduced, and the popular discontent and irritation caused by the pressure of taxation, and by the spoliative measures directed against the landed and cultivating classes, would precipitate the fatal result of irresponsible rule—an end which is already within sight. That this statement is far from being an exaggeration will be seen by a reference to the semi-official organs, both in India and at home. The *Pioneer*, for June 21st last, in the course of an Article

upon the present situation, says, with regard to land:—  
 “It is certain that the present state of things, which  
 “cannot but result in a most dangerous situation, must  
 “at any cost be remedied. A few years more will  
 “witness the almost complete ruin of the old pro-  
 “prietors, who will be turned into a class of discontented  
 “paupers, who see their only hope in social confusion,  
 “converted thus into ready victims of the wiles of the dis-  
 “loyal agitator. Much mischief has been done in the  
 • “past, but the books of the sibyl are still for sale, and, if  
 “we neglect the chance, we shall pay dearly later  
 “for our neglect. It is more difficult to say what  
 “measures should be taken to remedy the existing state of  
 “things.” Then the *Times*, for July 16th last, referring  
 to the exemption of Manchester goods from import duty  
 in India, says:—“It is felt that, in order to maintain that  
 “exemption India will be forced to go on borrowing in  
 “gold with which to pay her way. Several weeks ago we  
 “said that it was almost impossible for England to realise  
 “the bitterness of the Indian public feeling on this  
 “question. Articles in the native press which, a year  
 “ago, would have excited general indignation, are now  
 “applauded by the British journals in India.” Then,  
 after quoting some trenchant criticism from the *Madras*  
*Times* and the *Pioneer*, the writer says:—“We confine our  
 “quotations to passages from two of the most patriotic  
 “British organs in India. It could serve no good purpose  
 “to reproduce the language of indignation from the native  
 “press.”

In conclusion, I would remind the reader that the danger  
 in which India is placed is the direct result, as the *Times*  
 so clearly demonstrates, of the pernicious system by which  
 - India is governed—a system which has destroyed individual  
 responsibility, and is fast leading the State to a disastrous  
 catastrophe. It therefore behoves all who perceive the

danger to take the matter into serious consideration with the view of obtaining reforms that will remove the causes of the present troubles and place the future administration of the country on a basis of sound statesmanship, security, and justice.

J. DACOSTA.

## II.—CAMBRIDGE UNIVERSITY JURISDICTION.

TO Lawyers the chief interest in the Vice-Chancellor's Jurisdiction lay in an ancient Charter, undisturbed and unreformed since the third year of Queen Elizabeth's Reign. Few Lawyers have ever referred to the Charter, and probably they, like the public at large, have merely had their curiosity awakened from time to time by sensational accounts appearing in the Public Press, inspired by somebody whose activity is prone to find expression rather in faulty diagnosis than in any suggestion of remedy. The recent case of Daisy Hopkins was as a fact the action which fanned the slumbering embers of discontent, supposed to lie in the hearts of the non-academic population of the town of Cambridge.

The Charter\* granted to the University in Queen Elizabeth's Reign runs as follows:—That the Chancellor, Masters, and Scholars of the University of Cambridge by themselves or their deputies, officers, servants and ministers from time to time, as well by day as by night, at their pleasure, might make scrutiny, search and inquisition in the town and suburbs, and in Barnwell and Sturbridge, for all common women, bawds, vagabonds, and other

\* Cf. also Art. by J. Parker Smith, M.A., on *University Representation*, in *Law Magazine and Review*, Nos. CCL., November, 1883, p. 21, and CCLI., February, 1884, p. 143.

suspected persons coming or resorting to the town and suburbs or the said fairs, and punish all whom on such scrutiny, search and inquisition they should find guilty or suspected of evil by imprisonment of their bodies, banishment or otherwise, as the Chancellor or his vice-gerent should deem fit. And the Mayor, bailiffs and other officers and ministers of the town, and all other persons whatsoever, were commanded not to impede such scrutiny, search and inquisition, but on request of the Chancellor or his vice-gerent aid and assist therein, under pain of contempt and incurring the indignation of the Queen, Her Heirs and Successors;—from which it will be seen that the Vice-Chancellor could imprison any common woman, bawd, or vagabond within the prescribed limits when found guilty or suspected of evil by the Court.

In the month of December, 1891, Daisy Hopkins was imprisoned, but the conviction was quashed because the formula used in the charge (one in vogue from very early times), namely, "walking with an undergraduate," was held by Lord Chief Justice Coleridge and Lord Justice Smith to disclose no criminal offence, "such person" not being, in the words of the Charter, "suspected of evil."

The Press was able to rouse a certain class of public opinion against these powers possessed by the University Court, and it enlisted the sympathy of those very puissant members of Parliament, who are hotly opposed to anything which they think can possibly be converted into the protection of impurity.

This party was ably assisted by kindred spirits to whom any law 300 years old must of itself, from its mere antiquity, be bad and anomalous.

Perhaps the idea that any change deferred would mean total loss of any University privilege in these matters was a potent factor in causing the University to propose to the

Town the promotion of a Bill partly repealing this special jurisdiction. Be that as it may, the Town of Cambridge came to terms with the University, and the Bill drafted and approved by both bodies has now received the Royal Assent.

So far as the Undergraduate is concerned, we cannot but regret that any change is to be made, judging most naturally that any change of a *régime* which has for so long worked so well must be a change for the worse.

What, then, will be the change?

The powers conferred by the Charter which we have quoted are repealed *in toto*, and in their stead the powers given by a Statute in the Reign of George IV., viz., 6 George IV., cap. 97, to the University of Oxford, are to be extended to the University of Cambridge.

To put the matter shortly, an Act was passed in the fifth year of the Reign of George IV. which applied to Great Britain, and which gave, among other powers, the authority to constables to take up any prostitute standing in the public Streets and behaving in a disorderly manner, and the Act of 6 George IV., cap. 97, gave power to the University of Oxford to appoint constables with the same powers as other constables, who could take up any such person not giving a satisfactory account of herself (not necessarily behaving in a disorderly manner), and treat the person so taken up as a "disorderly person" under 5 George IV., cap. 83, the offender being brought before the Magistrates and punished according to the Act. The Vice-Chancellor is a Magistrate *pro tem.*, *ex officio*, and naturally there is no reason why many of the Magistrates should not be University Graduates. It will at once be seen that the effect of this is to place on a very different footing the discipline of the streets. In the first place the whole episode takes place in the Borough Police Court, the prisoner is tried by a mixed bench of Town and University Magistrates, and the

argument that the Court is a kind of Star Chamber can never be put forward any more. Still, the quiet, unostentatious procedure of the University Court, which maintained a discipline in the streets of the town, is to be done away with, and it is a matter of conjecture whether the change will be found to work as well as the old order of things.

Those who, like the present writer, are in favour of special Criminal jurisdiction for Cambridge, will probably think that the Act now placed upon the Statute Book is rightly a private Act, and that it will bring about the settlement of a vexed question which only concerned the University and the Town of Cambridge. To them it is a matter of little moment whether the Vice-Chancellor or the Borough Magistrates exercise the jurisdiction. On the other hand, to those who are adverse to these special Criminal powers the subject will be perhaps painfully interesting. Some of these devoted the best years of their political life to blotting out from the Statute Book the principle contained in the Act, and now, when they see it re-indorsed by the House of Commons by means of a Private Bill, their victory of a few years ago must seem rather a mockery. The real interest lies, therefore, not in the Act itself, which simply effects a transference of jurisdiction, but in the political sincerity of the Town of Cambridge and in the action of the House of Commons. We had always been under the impression that the non-academic population of Cambridge viewed the Charter of Queen Elizabeth's time as a relic of barbarism, a standing menace to freedom, and a glaring personal insult to themselves. When we recall the speech made by the Member for Cambridge in the House of Commons in 1873, on behalf of the repeal of the Contagious Diseases Acts, we may take it for granted that he was echoing the sentiments of his constituents. One of his arguments ran thus:

"Our present position is entirely wrong; it is inconsistent with reason and logic. We are professing to benefit a particular class, and refuse that benefit to a far more numerous class;" and, contrasting the two sexes, he said: "You do not treat them alike; that is obviously unjust." These sentiments were seconded by Mr. Mundella. It is somewhat of a disappointment to find that, after all, the Town of Cambridge were only jealous of the University powers, and that all they really desired was to be able to use powers themselves which they deprecated from such a high moral standpoint in the hands of others. Be it said at once that the University of Cambridge was always consistent, and that by petition and otherwise it had supported the Acts which Mr. Fowler strove so hard to repeal.

The House of Commons, in 1885, was persuaded by Mr. Stansfeld and his followers to repeal the Contagious Diseases Acts. This was the result of many years of agitation by the party under the leadership of the Member for Halifax, and also of the evidence taken before two Royal Commissions. There were many reasons why the House resolved to repeal these Acts, and very prominent amongst them were: firstly, that argument of Mr. Wm. Fowler already quoted; secondly, the possible abuse of any discretionary power in the hands of the police; and, thirdly, as Mr. G. W. E. Russell rhetorically put it, "What was his sin? What was hers? And how unequal is their fate! At any rate, whatever the pangs of conscience, he has still his friends around him and a position in the world; surely that difference in the sexes is enough!"

Now, the Cambridge Act legislates for a class; it places a discretionary power in the hands of the police, and it treats man and woman differently. Under these circumstances, all can at least understand the action of Mr. Webb, who first moved an amendment because, he said, what was required by one University was required by all. We can understand



that he should be supported by Mr. Stansfeld, Mr. Dodd, Mr. Labouchere, and Mr. J. Stuart. Again, we can understand that he should have been opposed by Lord Randolph Churchill, Sir John Gorst, and Sir Edward Clarke, for they had always supported special legislation, but that only 157 members should have been found in the present Democratic House of Commons to vote against the Bill seems difficult to account for.

The present writer, who is glad that the Town of Cambridge has retained the powers given up by the University, must be permitted to express the hope that when the time comes for the other younger and growing seats of learning to ask for similar special protection, the theory of Home Rule so opportunely brought to bear upon the Cambridge Corporation Bill may be extended to those younger corporations.

The non-contentious portion of the Act, which concerns the University, has more *raison d'être*. The Vice-Chancellor has, till now, under different statutes, held absolute power over the licences for Theatrical and other exhibitions. These exceptional powers have been a source of considerable feeling in the Town, and they are, by the new Act, transferred to the jurisdiction of the County Council for Cambridge and the Licensing Justices of the Borough.

The following is the text of that portion of the Act dealing with University Jurisdiction :—

“ So much of the Charter as is recited and set forth in the Preamble to this Act, and so much of the Act of the thirteenth year of the reign of Queen Elizabeth, chapter 29, intituled ‘ An Acte for Thincorporatōn of bothe Thuniversityes,’ and so much of any other Act as confirms or preserves that portion of the recited Charter is hereby repealed without prejudice to anything already done and suffered.

“ The said recited sect. 3 of the said Act, 6 Geo. IV., cap. 97, shall extend and apply to the University of Cam-

bridge, and, subject to the provisions of this Act, shall have effect within the precincts of the said University as if the words 'either of the said Universities of Oxford and Cambridge' were inserted therein in lieu of the words 'the said University of Oxford.'

"The Proctors and pro-Proctors of the University of Cambridge shall, by virtue of their respective offices, have the powers vested in constables duly appointed and sworn under or by virtue of sect. 1 of the said in part recited Act, 6 Geo. IV., cap. 97, and shall have power, for the maintenance of discipline amongst members of the University, with or without any constables appointed under the same Act, to enter any premises licensed for the sale of intoxicating liquors, or any premises kept or used for public entertainment of any kind during the performance of such entertainment, or so long as any of the public are assembled there.

"Sect. 10 of the Act, 'For regulating Theatres,' passed in 1843\* (6 and 7 Vict., cap. 68), is hereby repealed so far as it relates to the University or Town of Cambridge or the neighbourhood thereof.

"The County Council for the County of Cambridge may at any time revoke any licence\* for the public performance of stage plays within the Borough on the

\* 6 & 7 Vict., cap. 68, § 10. "Provided always and be it enacted that no such licence shall be in force within the precincts of either of the Universities of Oxford and Cambridge, or within 14 miles of the city of Oxford or Town of Cambridge, without the consent of the Chancellor or Vice-Chancellor of each of the said Universities respectively, and that the rules for the management of any theatre which shall be licensed with such consent within the limits aforesaid shall be subject to the approval of the said Chancellor or Vice-Chancellor respectively; and in case of the breach of any of the said rules, or of any condition on which the consent of the Chancellor or Vice-Chancellor to grant any such licence shall have been given, it shall be lawful for such Chancellor or Vice-Chancellor respectively to annul the licence and thereupon such licence shall become void."

complaint in writing of the Vice-Chancellor or the Mayor sent to the Clerk of the said Council, who shall forthwith, upon the receipt of such complaint, summon a special meeting of the County Council to consider the same, and give written notice of the complaint to the person complained of, in order that he may make his answer or defence at such special meeting.

“The Licensing Justices for the Borough may at any time revoke any Licence within the Borough granted in pursuance of Part IV. of the Public Health Acts Amendment Act, 1890, on the complaint in writing of the Vice-Chancellor or the Mayor, sent to the Clerk to the Justices, who shall forthwith upon the receipt of such complaint summon a special session of the Licensing Justices to consider the same, and give written notice of the complaint to the person complained of, in order that he may make his answer or defence at such special session.

“Sect. 16 of the Cambridge Award Act, 1856,\* shall henceforth be read and have effect as if the words ‘(except during the period of Midsummer Fair or in the Long Vacation),’ and the words ‘Vice-Chancellor and the’ were expunged and omitted therefrom.

“Nothing in this Act contained shall affect any right, power, or privilege of the University, or of any Court or Officer of the University, except so far as the same is hereby expressly abolished or modified.”

FRANCIS H. CRIPPS-DAY.

\* 19 & 20 Vict., cap. xvii., § 16 (Local and Personal Act). \* No occasional public Exhibition or Performance, whether strictly theatrical or not other than Performances in Theatres which are regulated by the Act 5 & 7 Vict., cap. 68, shall take place within the Borough (except during the period of Midsummer Fair or, in the Long Vacation) unless with the consent in writing of the Vice-Chancellor and the Mayor, and every Person who shall offend against this Enactment shall be liable to forfeit a sum not exceeding £20, recoverable in like manner as Penalties imposed by this Act.”

### III.—THE FUNCTION OF EVIDENCE IN ROMAN LAW.—III.

OTHER matters connected with the scope of the present inquiry which are worthy of notice are the capacity of witnesses, the relevancy of evidence, the respective provinces of oral and written evidence, the function of presumptions, and registration.

#### *Witnesses.*

The most striking rule of Roman Law is that in order to constitute *plena probatio* two witnesses were necessary.\* Whether this was always the case cannot be affirmed with certainty, but the law was certainly established by a constitution of Constantine in 334, probably in imitation of the rule of the Mosaic law.† Where no number was named by the law two were sufficient.‡ This was subject to the exceptions that in treason torture could be ordered on the evidence of a single witness,§ that the evidence of a notary was usually equivalent to that of two ordinary witnesses, and that in certain cases a larger number than two was required. Three witnesses were required for an inventory,|| for

\* Unless the *semiplena probatio* of one witness were supplemented by oath of the party or torture. Where the *probatio* was incomplete it was not the right but the remedy that was affected. *Non jus deficit sed probatio*, as the Civilians expressed it.

† *Cod. iv.*, 20, 9, 1.

‡ *Dig. xxii.*, 5, 1, 12. According to Klotz and others no more than ten witnesses were allowed in a trial before *recuperatores*. Cicero *pro Caccina*, c. 10, is relied on as the authority for this statement.

§ This is, as the English lawyer will observe, in direct opposition to the practice on trials for treason in England since the reign of William III. By the law of the Roman Catholic Church a single witness was sufficient to prove a charge of heresy. See Malletus, *Aurum Moralis Theolog.æ* (Turin, 1656), and other authorities.

|| *Nov. i.*, 2, 1.

comparison of the handwriting of a *chirographon*,\* for giving an instrument of hypothec (*idiochiron*) priority as a public document,† for a *donatio*,‡ for proof of adultery,§ for recognition of natural children as legitimate,|| and for a *depositum* or *mutuum* made in writing.¶ Five were required for a *mancipatio*, for *codicilli*,\*\* for a grant of freedom, for manumission orally or by letter, for the destruction of the title-deeds of a slave,†† and for proof of cognation.‡‡ Seven were required for divorce,§§ and for a will||| (with some exceptions). Ten were necessary for the old ceremony of *confarreatio*. \*A *fideicommissum* might be established by *codicilli* witnessed by fewer than the statutory five, or even by none at all, but in this case the *heres* was put to his oath, and the claimant had to take the oath *de calumniâ*.¶¶ The titles *De Testibus* in the *Digest*\*\*\* and *Cod*††† and *Novel* xc.‡‡‡ contain numerous rules as to the capacity of witnesses, in general accordance with obvious principles of justice, but at times somewhat strange to those accustomed only to English practice. In general they apply to both civil and criminal procedure.§§§ Some of the more important rules are as follows, excluding the law of witnesses to wills, which was to some extent

\* *Cod.* iv., 21, 20. † *Cod.* viii., 18, 11; *Nov.* lxxiii.

‡ *Leon. Const.* 1. § *Nov.* cxvii., 15. *Nov.* cxvii., 2.

¶ *Nov.* lxxiii. \*\* *Cod.* vi., 36, 8, 3. †† *Cod.* vii., 6, 1, 2, and 11.

‡‡ If there was written evidence three were sufficient, *Cod.* iv., 20, 1.

§§ *Dig.* xxiv., 2, 9.

||| *Inst.* ii., 10, 3. The number of witnesses to a will was afterwards reduced by *Leon. Const.* xli. to five in cities, three in the country.

¶¶ *Inst.* ii., 23, 12; *Cod.* vi., 42, 32.

\*\*\* xxii., 5. ††† iv., 20.

‡‡‡ The immediate occasion of the promulgation of this *Novel* (539) is stated to be a fraud committed in Bithynia, where a pen had been put into the hand of a testatrix after her death, and her hand had been guided to make the sign of the cross as a signature to her will.

§§§ *Non solum in criminalibus causis sed etiam in pecuniariis litibus*, *Dig.* xxii., 5, 1, 1. The term *pecuniarius litibus* is probably used because in the majority of civil actions the claim is reducible to a money value.

different in practice, though in principle the same.\* Roman Law tended to the imposition of legal disqualifications, the tendency of modern systems is, on the contrary, to admit all persons to give evidence for what it is worth. Most of the circumstances which would have disqualified in Roman Law now only affect the value of the testimony, not the capacity of the witness. The disqualifications were either absolute or relative. The principal absolute disqualification was personal interest in the cause of action. The maxim of law was, in the words of Pomponius, *Nullus idoneus testis in re sua intelligitur*.† This was extended to persons standing in certain defined relations to any party to an action, e.g., those connected by blood or affinity as far as cousins, husbands and wives, and patrons and freedmen.‡ The incapacity of a party to give evidence in his own cause must be of course always taken as subject to his liability to deny the cause of action on oath. Other absolute disqualifications were infancy,§ convictions for crimes of a certain kind,|| being an accomplice,¶ or affected with *infamia*,\*\* compulsion,†† *inimicitia*,‡‡ the status of slavery where torture had not been applied,§§ and, at one period, heresy.|||

\* *Nov.* xc., 3.

† *Dig.* xxii., 5, 10. The same principle is found in other places, for instance, *Cod.* iv., 10, 10.

‡ *Dig.* xxii., 5, 4.

§ In civil cases witnesses must be above the age of puberty, *Dig.* xxii., 5, 3, 5, in criminal they must be twenty years of age, *Dig.* xxii., 5, 20.

|| *Dig.* xxii., 5, 20. Adultery and extortion or taking bribes were special disqualifications, *Dig.* xxii., 5, 15 and 18. A person convicted of *calumnia* was a good witness, *Dig.* xxii., 4, 13.

¶ *Cod.* iv., 20, 11. \*\* *Dig.* xxii., 5, 3, 5. See Greenidge, *Infamia*, 166.

†† *Dig.* xxii., 5, 6.

‡‡ *Cod.* iv., 20, 17; *Nov.* xc., 7.

§§ *Dig.* xxii., 5, 7.

||| Justinian originally excluded *Borboritæ*, *Samaritæ*, Jews, and other heretics, *Cod.* i, 5, 21. They were afterwards admitted by *Nov.* xlv, for the curious reason that the evidence of a heretic was given on behalf of the State, which was orthodox.

One who had given evidence previously against the same accused was disqualified,\* as was, unless in causes affecting domestic matters, a member of the household of the accuser.† A speech to discredit witnesses of the other side was, at any rate in the time of Cicero, known as *interrogatio testium*,‡ and attacked either their qualification or their credit. Relative disqualifications were those of an advocate, who could not give evidence in a cause in which he had been engaged,§ of accuser and accused in a criminal case during the pendency of the case,|| and of a woman, who was excluded in most claims arising out of contract.¶ Certain persons were relieved from giving oral testimony by reason of their position in the State, such as bishops\*\* and soldiers,†† or of their age and infirmity.‡‡ The attendance of witnesses was originally a matter concerning only the private interest of the party who required their attendance. If he wanted them, he must summon them himself by the use of the legal phrases *testes estote* or *licet antestari*.§§ By a

\* *Produci testis is non potest qui ante eum reum testimonium dixit*, Dig. xxii., 5, 23. This passage has led to considerable difference of opinion. The question is whether it means what has been stated above, or the reverse, viz., that one against whom the accused had given evidence was disqualified. The latter sense appears the more reasonable, but the words as they stand seem grammatically to imply the meaning given in the text. For *eum reum* Hineccius would read *eam rem*.

† Dig. xxii., 5, 24.

‡ This must be distinguished from the *interrogatio coram testibus*, mentioned in Dig. xxiv., 3, 58, and other places.

§ Dig. xxii., 5, 25.

|| Nov. xc., 7.

¶ Leon. Const. xlviii. This view of the incapacity of women as witnesses was followed by Canon Law, and existed in Scotland to a considerable extent until it was abolished by the Titles to Land Consolidation Act, 1868. The only instance of it in England appears to be their disability as witnesses to prove a man a villein, *mulieres ad probationem status hominis admitti non debent*, Co. Litt., 6b.

\*\* Cog. i., 3, 7; Nov. cxxiii., 7.

†† Dig. xxii., 5, 8.

‡‡ Ib.

§§ See Horace, Sat. i., 9, 76. Hence the old use of *antestatus* to mean a witness.

constitution of Justinian their attendance was secured by *fidejussio* if they were willing, by oath if they were unwilling, but in no case could they be imprisoned so as to secure their testimony.\* Leave of the Court to summon witnesses appears from Pliny to have been given to the prosecutor at an earlier date than to the accused.† Whether witnesses for the accused could be compelled to appear was doubtful, at any rate in Cicero's time.‡ The summons was always an act of the court,§ whether the witness were willing or unwilling.|| The witness was entitled to reasonable expenses (*sumtus competentes*) at the cost of the party summoning him,¶ and was not to be put to any expense himself.\*\* He could not be detained more than fifteen days.†† The examination was by the Judge.‡‡ In the examination leading questions were not to be asked.§§ In the absence of evidence on one side, where the witnesses had been duly summoned, the Judge was to proceed as though they had appeared.||| The oral evidence¶¶ of a witness was naturally regarded as of greater weight than his written deposition.\*\*\* Hearsay evidence of facts of ancient date was, perhaps, admissible where no more direct evidence was attainable.††† It seems probable that a witness was not bound to criminate himself, by his answers.‡‡‡

\* *Cod. iv., 20, 19.* † *Letters, v., 20; vi., 5.* ‡ *Pro Rosc. Amer., c. 38.*

§ Cicero, *Verres, ii., 26*; Quintilian, *v., 7, 9.* The witness so summoned was sometimes called *adlegatus*.

|| *Nov. xc., 8.* ¶ *Cod. iv., 20, 11.* \*\* *Cod. iv., 20, 16, 1.*

†† *Cod. iv., 20, 19.* ‡‡ *Dig. xxii., 5, 3, 3.*

§§ *Dig. xlviii., 18, 1, 21.* ||| *Nov. xc., 9.*

¶¶ *Testimonium, testificatio, depositio* (the latter being also used for a written deposition). \*\*\* *Dig. xxii., 5, 3, 3.*

††† *Dig. xxii., 3, 28.* Cicero calls such evidence *testimonium de auditione*, and says that it was allowed *apud veteres*.

‡‡‡ This was certainly so in the case of treasure-trove, the finder of which was not bound to inform against himself, *Dig. xlix., 14, 3, 11*, and in the case of production of a compromising document, it being enacted that the producer was to be held harmless. *Cod. iv., 21, 22.*



Witnesses were to be weighed, not counted.\* They could not be produced more than three times after an *exceptio dilatoria* unless an oath were taken that the production was not for the purpose of fraud.† At what time it became necessary to give evidence on oath is not known; the earliest text in which the oath is regarded as necessary is the constitution of Constantine in 334, already referred to as making two witnesses necessary.‡ Witnesses to character (*laudatores*) were in use in criminal trials as early as the time of Cicero.§ Whether any procedure like the *confrontatio testium* of the Canon Law was known in Roman Law does not appear from the texts.

Perjury by a witness, unlike perjury by a party, was punishable by the criminal law. That such punishment was, however, of late origin appears by the inclusion of penalties for perjury in the *Lex Cornelia de Falsis*, where it is grouped with the penalties for forgery and similar crimes. In many cases the punishment was summary. A witness giving varying or lying evidence was liable to summary punishment by the Judge at the trial.|| A civil action also lay against the witness.¶ It was punishable by death or deportation to procure by false evidence the conviction of a person of a capital offence.\*\* A witness giving or withholding testimony for money was liable to deportation,†† and the party suffering from the corruption of the witness was entitled to *restitutio in integrum*.‡‡ The punishment of

\* Dig. xxii., 5, 21, 3 (*non enim ad multitudinem respici oportet sed ad sinceram testimoniorum fidem*).

† Nov. xc., 4.

‡ Cod. v., 20, 9, *pr.* The same principle was strictly observed in the Canon Law, and the obligation of taking an oath as witness was irremissible even by the Pope.

§ Verres, ii., 5, 22; *pro Balbo*, c. 18.

|| Dig. xxii., 5, 16.

¶ Cod. iv., 20, 13.

\*\* Paulus, *Sent.*, v., 23, 1; Dig. xlviii., 8, 16.

†† Dig. xlviii., 10, 1, 2, and 13.

‡‡ Dig. xlii., 1, 33.

perjury was sometimes denounced against those guilty of crimes only slightly analogous, *e.g.*, against any one exacting an oath of *perseverantia* from an actress.\* Priests and deacons for perjury in civil cases were liable to relegation to a monastery for three years, in criminal cases to *legitimæ pœnæ*, persons in minor orders were subject to torture.† It was not perjury to discontinue an action after an arrangement had been made between the parties, even though an oath *judicio sisti* had been taken.‡ From allusions in the classical writers perjury seems to have been a very common offence.§

### *Relevancy and Sufficiency of Evidence.*

It is characteristic of the kind of cases which came before the Roman civil tribunals that all the examples of irrelevant evidence recorded appear to have arisen on claims to slaves and to have been decided at the same period, towards the close of the third century. It was irrelevant to shew that the father was free as evidence of the freedom of the daughter, for on the principle *partus sequitur ventrem* she might be a slave and her father free.|| It was relevant to shew that a daughter was born after the mother became free, but not that her brothers were unquestionably free.¶ It was irrelevant to shew that Glycon's mother and brother were slaves, for one in a family might have obtained freedom.\*\* As to sufficiency of evidence a wide discretion was left to the Judge, subject to a few general rules, such as that as to a due number. Principles of practice were laid down by Callistratus *de Cognitionibus*—incorporating

\* *Nov. li.*

† *Nov. cxxiii., 19.* By *Leon. Const. lxxvi.*, the first penalty was made applicable to all ranks of the clergy.

‡ *Dig. ii., 8, 16.*

§ *e.g.*, *Non bene conducti vendunt perjuria testes.* *Quid, Amores, i, 10, 37.*

|| *Cod. iv., 19, 10.*

¶ *Cod. iv., 19, 17.*

\*\* *Cod. iv., 19, 22.*

rescripts of Hadrian and others—to the effect that the position of the witnesses and their motive to misrepresent should be considered by the Judge.\* If not suspicious *propter personam*, i.e., on account of the infamy or low rank of the witness, or *propter causam*, on account of gain or enmity, the evidence ought to be received. The Judge was not to lay down any hard and fast rule, but deal with every case on its merits. A provincial Judge was to regard the custom of his province. Many of the cases on sufficiency, like those on relevancy, were decided on the point of the freedom or not of a particular person, whether in a *liberalis causa* or in an *interdictum de libero homine exhibendo*. For instance, in order to prove the freedom of a family of brothers, more was required than evidence of the freedom of one,† nor was evidence of a contract of hiring in itself sufficient to prove freedom.‡ It was not enough to prove that the father of the person whose freedom was in question had attained a place in the civil service (*civiles honores*), for he might have done so illicitly.§ The rules as to *onus probandi* or *onus probationis* (the latter seems the classical term),|| are in consonance with those generally accepted in modern practice. The cardinal rule as laid down by Paulus is *Ei incumbit probatio qui dicit non qui negat*.¶ The *onus* was on the party who would fail in the absence of evidence on either side. Accordingly the plaintiff had to prove his case, the defendant his *exceptio*,\*\* though if the plaintiff sued on a *cautio* and the defendant pleaded *exceptio doli* or *non numeratæ pecuniæ*, the plaintiff had to prove not only the execution of the *cautio*, but also

\* *Dig.* xxii., 5, 3.\*

† *Cod.* vii., 16 17.

‡ *Id.*, 18.

§ *Cod.* vii., 16, 11.

|| *Dig.* xxii., 3, 25, 3.

¶ *Dig.* xxii., 3, 2. A similar principle occurs in *Cod.* ii., 1, 4, and in the maxim *actori incumbit rei probatio*.

\*\* *Dig.* xxii., 3, 19, *pr.* *Reus in exceptione actor est*, *Dig.* xlv., 11, whence the rule of the commentators, *Reus excipiendo fit actor*.

payment of the money.\* If a party claimed to be a minor† or alleged a secret trust‡ or the existence of fraud,§ he had to prove it, as it was not incumbent on the plaintiff to prove the negative of it in the first instance. A change of intention must be proved.|| A *heres* must establish his right to the *quarta Falcidia*.¶ A possessor, protected by his *beatitudo possessionis*, was under no obligation to prove anything,\*\* unless where the *possessio* was of a man claiming to be free,†† or was *quasi-possessio* of a servitude. According to some authorities, the defendant, in an *actio negatoria*, must prove his servitude, even though he was in *quasi-possessio* of it.‡‡ The general rule as to *possessio* was in accordance with the well-known maxim, *In pari causâ possessor potior haberi debet*.§§ A remarkable case of *onus* occurred in the appointment of a *tutor* by an inferior magistrate. If a question arose as to the solvency of the sureties offered by the *tutor*, it was for the magistrate to shew that they were solvent, not for the *pupillus* to shew that they were insolvent.|||| Where freedom was in question the *onus* varied as the person claimed was in enjoyment or not of liberty at the time of the trial.¶¶

### Written Evidence.\*

The generic word for written or documentary evidence was *instrumentum* or *instrumenta*, *actum* or *acta*. The titles of the *Corpus Juris* bearing on the matter are entitled

\* *Cod.* iv., 30, 3.

† *Dig.* xxii., 3, 3.

‡ *Dig.* xxii., 3, 22.

\*\* *Cod.* iv., 19, 2; ¶ii., 31, 1.

†† *Dig.* viii., 5, 6, 1. The text of *Dig.* viii., 5, 8, 3, however, goes to shew that the plaintiff in such an action must prove his case, although he had the difficulty of proving a negative.

§§ *Dig.* l., 17, 128.

|||| *Dig.* xxvii., 8, 1, 13.

† *Cod.* iv., 19, 9.

§ *Dig.* xxii., 3, 6.

¶ *Id.*, 7. •

†† *Dig.* xxii., 3, 20.

¶¶ *Dig.* xxii., 3, 14.

*De Fide Instrumentorum*.\* *Instrumentum*† is limited in some cases by the addition of a specific adjective, such as *dotale*. Such instruments were either public (*publica*, sometimes *monumenta*) or private (*privata*, *domestica*, or *idiochira*), and were either witnessed or not. Examples of documents to which attestation was necessary were wills,‡ instruments of *depositum* and *mutuum*, and letters of manumission. In some cases the authority or signature of a notary or magistrate was necessary even for a document *prima facie* private in its nature, thus making it quasi-public.§ Thus one of the modes of admitting an *emphyteuta* was in the presence of a notary or magistrate.|| In post-Justinian law a will was often sealed by a magistrate.¶ The texts do not define a public document. Apparently the intervention of a public officer might make any private document at least quasi-public, and so falling within the rules of proof applying to public documents. The same effect was sometimes attained by sufficient attestation, such as the *chirographon*\*\* and *idiochiron* with three witnesses.†† A notary must have had knowledge of the contents of the document witnessed by him,‡‡ and the protocol with the name of the *comes sacrarum largitionum*, and the date must have been left as a part of the instrument.§§ It is sometimes doubtful whether a particular text applies to both private

\* *Dig.* xxii., 4; *Cod.* iv., 21; *Nov.* lxxiii.

† *Instrumentum* applies nominally to *ea omnia quibus causa instrui potest*, *Dig.* xxii., 4, 1, i.e., oral as well as written testimony, but in practice the texts generally confine it to the latter. In *Cod.* ii., 4, 29, *species* is used as the equivalent of *instrumenta*. Other terms used are *scriptura*, *chartula*, *ratio*, *documentum*, *monumentum*, &c.

‡ Witnesses to wills were, according to Festus, called *classici testes*.

§ *Quasi publice scriptum*, *Cod.* viii., 18, 11.

|| *Cod.* iv., 66, 3.

¶ *Leon. Const.* xlv.

\*\* *Cod.* iv., 21, 20.

†† *Cod.* viii., 18, 11.

‡‡ *Nov.* xlv., 1, *pr.*

§§ *Nov.* xlv., 2. The protocol was the first sheet of a papyrus roll, generally cut away until this enactment enforced its retention.

and public documents. Acts of State, such as constitutions and orders of the Emperor (whether *subscriptiones*, *pragmatica*, *mandata*, *epistolæ*, *rescripta*, *commonitoria*, *diplomata*, or other forms), and decisions of Judges were the main examples of *ipso jure* public documents, and they were required to be executed in a particular manner. The names of the Emperor and of the Consuls, and the month and day of the Indiction were to be prefixed to all judicial documents.\* Imperial commands (*divinæ jussiones*) were to be subscribed by the *quæstor*.† They were not to be produced in the middle of an action as decisive, but the case was to be determined on legal principles.‡ Both public and private written contracts were by a supplement (*amplissimus ordo*) to the *Lex Cornelia de Falsis* to be signed on wax laid on the folded instrument in a particular way, so as to avoid the risk of the document being tampered with.§ A *transactio* could not be set aside, if entered into *bonâ fide*, simply by the discovery of new documentary evidence.|| Where there was an appeal pending, all documents were by a constitution of Valentinian and Valens in 364 to be forwarded to the Court of Appeal within a limited time.¶ This would at a later period have included the judgment of the lower Court, which by a constitution of Leo the Philosopher must have been in writing.\*\* The main distinctions between public and private documents were these: (1.) A public document was preferred to oral evidence.†† A private document was equivalent to oral evidence.‡‡ Its only advantage was the greater facility of proof. §§ (2.) A public

\* Nov. xvii.

† Nov. cxiv.

‡ Nov. cxiii.

§ Paulus, *Sent.*, v., 25, 6.|| *Cod.*, ii. 4, 19, and 29.¶ *Cod.* vii., 62, 24.\*\* Leon. *Const.* xlv.†† *Dig.* xxii., 3, 10.‡‡ *Eundem vim obtinent tam fides instrumentorum quam depositiones testium*, *Cod.* iv., 21, 15.§§ *Dig.* xxii., 4, 4.

document proved itself,\* like the probative writing of Scots law or an Act of Parliament in England. A private document did not in general suffice without further proof, it was only *primâ facie* evidence.† For instance, a document executed by a creditor, even the *fiscus*, was not of itself sufficient to charge a debtor.‡ On the other hand, oral evidence was not of itself sufficient to prove freedom.§ A private writing (*scriptura*) naming the estate to which a *colonus* belonged was not sufficient to establish title to him without further proof, such as his enrolment on the *census*.|| Nor was the declaration of a man that he wished to become a *colonus* valid without subsequent reduction to writing.¶ Letters by the father to the mother acknowledging an illegitimate child were raised to be *instrumenta* of proof by Antoninus and Verus.\*\*

The principal examples of private documents†† were the *cautio*‡‡ (sometimes called *securitas*), *chirographon*, *syngraphæ*, *apocha*, *antapocha*, and written *stipulatio*, most of them being written acknowledgments of debts due or receipts for debts paid.§§ The *chirographon* and *syngraphæ* were the representatives of the primitive *nomina*, or debts

\* *Nov.* xlix., 2.

† *Cod.* iv., 19, 5. *Cf. non figura litterarum sed oratione quam exprimunt litteræ obligamur, Dig.* xlvii., 7, 38.

‡ *Cod.* iv., 9, 7.

§ *Cod.* iv., 20, 2.

|| *Cod.* xi., 47, 22, *pr.*

¶ *Ib.*

\*\* *Dig.* xxii. 3, 29.

†† Some of these words, especially *chirographon*, occur in early English law. Thus the *chirographarii* were officers of the Exchequer who preserved *chirographa* entered into between Christians and Jews, Madox, *Hist. of Exch.* i., 221.

‡‡ *Cautio* in this sense is analogous to, but by no means synonymous with its use as meaning a judicial security, as in *cautio de dolo, damni infecti, de persequendo servo, de amplius non turbando, usufructuaria, moratoria, &c.* In rare instances it means an agreement in general, as in *privatorum cautione legibus non esse refragandum, Dig.* xxxv., 2, 15, 1.

§§ See the works of Brunner (1880) and Erman (1883) on Roman acquittances.

proved by an entry in the *codex*, or ledger of the creditor.\* The debt could be assigned by means of *expensilatio* or *nomina transcriptitia*.† There was a doubt whether aliens could be bound by *nomina transcriptitia*,‡ and the *chirographon* and *syngraphæ* were no doubt permitted by the prætor in order to protect contracts by aliens. In the end they superseded *nomina*, even between citizens, and in the time of Justinian the literal contract of the *jus civile* had ceased to exist.§ The *chirographon* (or *chirographum*) || had attained a legal sense in Cicero's time.¶ It was an acknowledgment of debt signed only by the debtor and kept by the creditor. It might be the subject of a *legatum*.\*\* *Syngraphæ* (in the time of Gaius peculiar to aliens)†† differed from the *chirographon* in being two documents, an original and a counterpart,‡‡ signed by debtor and creditor, and a copy kept by each. If not so signed, the document was only an *autographon*. There was also the difference, according to the Pseudo-Asconius, that *chirographa* were only valid as far as they recorded the truth, but *syngraphæ* might be valid as evidence of an agreement even contrary to the truth.§§

The action on both *chirographon* and *syngraphæ* was a *condictio*. Where the money had not really been paid over,

An allusion to this form of creating evidence of a debt is made by Horace, *Sat.* ii., 3, 69 :

*Scribe decem a Nerio ; non est satis, adde Cicuta  
Nodosi tabulas centum, mille adde catenas.*

† Gaius, iii., 28.

‡ *Id.*, 133.

§ *Inst.* iii., 21, *pr.*

|| *Chirographa* seem to have been written on wooden tablets in Juvenal's time. *Vana supervacui dicunt chirographa ligni*, xiii., 137. •

¶ Which apparently *syngraphæ* had not done. Long on Cic., *Verres*, ii., 1, 36.

\*\* *Dig.* xxxii., 59.

†† iii., 134.

‡‡ The counterpart alone seems to have been called *antisyngraphæ*, Just. *Edicta*, ix., 2.

§§ Pseudo-Asconius in Bruns, § 91.



and a *chirographon* or *syngraphæ* were produced as evidence of the debt, an *exceptio non numeratæ pecuniæ* could be pleaded by the debtor. It was equivalent to an *exceptio doli*,\* and must have been brought within two years.† The *chirographon* was only evidence of the debt, mere entry in a *chirographon* of a sum as due did not of itself constitute an *obligatio*.‡ The debtor could bring a *condictio* to recover the instrument if withheld from him.§ A *syngrapha* by which a woman bound herself to lead an immoral life was void.|| If the debtor liable on a *syngrapha* denied his liability, he could be made to pay double the amount of the loan.¶ The *cautio*, although, perhaps, originally only a development of the *chirographon*,\*\* appears to be used later as the most general term for any kind of private instrument, including even a will.†† It may also be used for a simple promise,‡‡ for a *stipulatio*, especially in the form known as the *Muciana cautio*,§§ or for a receipt.||| A form of a *cautio* in its more technical meaning of a written security for a debt, taken from the *Quæstiones* of Paulus, is given in the Digest.¶¶ It there bears the appearance of a bond, the obligor binding himself to repay a loan by instalments, with a penalty of a *denarius* a month for every hundred *denarii* unpaid at maturity. *Apocha* was a receipt for a debt, whether

\* *Cod.* iv., 30, 3.† *Inst.* iij., 21, *pr.*‡ *Dig.* xxii., 3, 31.§ *Cod.* iv., 30, 7.|| *Nov.* xiv., 1.¶¶ *Nov.* xviii., 8. Note the use (very rare) of *Syngrapha* in the singular number. In such a case as the above the oath must be tendered to the defendant as soon as possible, or the plaintiff would be liable for all costs occasioned by the delay. The penalty of double damages is expressly said to be imposed on the analogy of the *Lex Aquilia*.\*\* Cicero combines the two terms, *Græculan tibi misi cautionem chirographi mei*, *ad Fam.*, vii., 18.†† *Dig.* xxvi., 7, 5, 7.‡‡ *Cod.* vi., 38, 3 (where its Greek equivalent appears as ἀσφάλεια).§§ *Dig.* xxxv., 1.||| *Dig.* xxii., 3, 15.¶¶ *Dig.* xii., 1, 40.

public, as a tax,\* or private, as rent.† It was more conclusive than the simple restoration of a *chirographon*,‡ but less so than an *acceptilatio*, for the latter was an absolute discharge, the *apocha* only if the money had been paid.§ A mere *pactum* that no further controversy should be raised on a contract did not bar the party from subsequent action.|| *Antapocha* was a writing by which the debtor shewed that he had paid the debt.¶ The written *stipulatio* was a means of shewing that an oral *stipulatio* had been duly made, and this whatever were the subject-matter of the contract; it applied, for instance, to *fidejussio*\*\* and to a marriage settlement.†† On the same principle a document might be evidence of *traditio*.‡‡ The written record of a *stipulatio* carried with it a presumption that the question of the *stipulatio* had been properly asked and answered,§§ and that if a slave were named as having made a *stipulatio* he had been present and was the slave of the master named in the instrument.|||| Where the instrument contained such words as *rogavit Titius, spondendit Mævius*, an action *ex stipulatu* lay, unless there were evidence that the parties intended the contract to be one of *pactum* and not of *stipulatio*.¶¶ Error in transcribing the *stipulatio* did not make it void.\*\*\*

The question whether oral or written evidence preponderated when in opposition to one another is one not easy to answer. The rule *Contra scriptum testimonium non*

\* *Cod.* iv., 66, 2; *Nov.* vii., 3, 2.

† *Cod.* vii., 43, 6; *Cod.* iv., 66, 2 (receipt for rent due by an *emphyteuta*).  
A slave for whom his vendor had an *apocha* was called *apochatus*.

‡ *Cod.* viii., 43, 14. The *apocha trium annorum* is still a technical term of Scotch law.

§ *Dig.* xlv., 4, 19.

¶ *Cod.* iv., 21, 19.

†† *Dig.* xlv., 1, 134.

§§ *Cod.* viii., 38, 1.

¶¶ *Dig.* ii., 14, 7, 12.

|| *Dig.* xii., 6, 67, 3.

\*\* *Dig.* xlv., 1, 30.

‡‡ *Cod.* iv., 38, 12; vii., 32, 2.

|||| *Cod.* viii., 38, 14.

\*\*\* *Dig.* i., 17, 92.

*scriptum testimonium haud profertur*\* seems express, and is supported by other texts.† On the other hand, *Eandem vim obtinent tam fides instrumentorum quam depositiones testium* seems to imply their equality.‡ And the terms of several of the constitutions in *Cod. iv.*, 22 (*In contractibus rei veritas potius quam scriptura perspicui debet; § non quod scriptum sed quod gestum est inspiciatur; ¶ plus actum quam scriptum valet*¶), appear to imply that (at any rate in contract) oral evidence might always be adduced in opposition to a written document.\*\* The texts can probably be reconciled only by reading the terms of *Cod. iv.*, 20, 1, as the general rule applying to public and private documents, subject to a few exceptions. One exception seems to be the case of the *chirographon* and *syngraphæ* mentioned above. Apparently a *pactio* contained in *syngraphæ* could not be contradicted, even though it did not express the truth. Another exception was the case of a master naming his slave as his son in a public document. *In favorem libertatis* such a statement could not be contradicted.†† In some cases proof could be made by either documentary or oral evidence. This was the case with *dos*, which could be claimed either on the evidence of a *stipulatio* or *pactum*, or on that of a *dotal instrumentum*.‡‡ In a *vindicatio* any *indicia* not rejected by the law were as good evidence as *instrumenta*.§§

\* *Cod. iv.*, 20, 1.

† Such as *Dig. xxii.*, 3, 25, 4; *Cod. iv.*, 30, 13. The general sense of the latter text is that a party was estopped by his own writing unless he could prove by the clearest evidence that some addition or omission had been made in it fraudulently.

‡ *Cod. iv.*, 21, 15.

§ *Cod. iv.*, 22, 1.

¶ *Id.*, 3.

¶ *Id.*, 4.

\*\* In *Dig. xxii.*, 5, 3, 4, the reference is only to the written deposition of a living witness who might have been produced.

†† *Cod. vii.*, 6, 10.

‡‡ *Nov. cxvii.*, 4.

§§ *Cod. iii.*, 32, 19.

It should be noticed that few private transactions were required by Roman Law to be in writing. They were put into writing only for convenience of proof. Wills must (with certain exceptions) have been in writing. Among other documents which the law required may be mentioned gifts *inter vivos* of more than 500 *solidi* (except to or from the Emperor),\* contracts with *argentarii*,<sup>†</sup> *libelli appellationis*,<sup>‡</sup> *editiones actionis* (with certain exceptions),<sup>§</sup> and marriage settlements made by *illustres*, which must have been made by *dotalia instrumenta*.|| Such instruments were usual, but not necessary, in the case of other marriages.

Where an original document (*originale, authenticum*) existed and was capable of being proved, a copy (*index, exemplum, exemplar, exemplarium*),<sup>¶</sup> was not as a rule admissible, even where the *fiscus* was a suitor.\*\* Where a will was made in duplicate (*exemplarii causâ*) either part appears to have been regarded as an original.†† Where an original document had been lost, secondary evidence of its contents was admissible, whether oral or by other *evidentes probationes*.‡‡ Thus payment of taxes could be proved on destruction of the original receipts by inspection of the books of the *fiscus*.§§ The contents of a lost will could be proved by oral evidence.||| But the contents of an existing but illegible will could not be so proved.¶¶ The enjoyment of property as the result of a contract was sufficient evidence that the contract had been duly made.\*\*\* The same was the case with *possessio*, division, and emancipation.†††

\* See below.

† Just. *Edicta*, ix.

‡ *Dig.* xlix., i, 1, 4.

§ *Dig.* ii., 13.

|| *Nov.* cxvii., 4.

¶ These are the words used in the *Corpus Juris*; Pliny, xxxv., 11, 40, also uses *apographon*.

\*\* *Dig.* xxii., 4, 2.

†† *Dig.* xxxi., 47.

‡‡ *Cod.* iv., 21, 1 and 7.

§§ *Cod.* iv., 21, 4.

||| *Cod.* iv., 1, 13.

¶¶ *Dig.* xxviii., 4, 1, *pr.*

\*\*\* *Ib.*, 10.

††† *Ib.*, 8, 9, and 11.

*Parol Evidence to explain Writing.*

The strict English rules as to the admission of parol evidence to explain a contract or other writing were, as has been already said, unknown in Roman Law. They were not required, and therefore were not formulated. The principal instances of the admission of explanatory parol evidence were to explain the intention of a testator in the case of doubt as to a pecuniary *legatum* by his habits (*consuetudo*) or his domicil (*regio*),\* and of a party to a *stipulatio* by the rule existing where the *stipulatio* was made.† A case similar to a class which has given much trouble to English Judges was this. A testator had two slaves, Flaccus, a fuller, and Philonicus, a baker. If he leave Flaccus, the baker, to his wife, what happens? According to Javolenus the first thing to be considered is the intention of the testator; if that be not clear (presumably by intrinsic evidence), evidence should be given as to knowledge by the testator of the names of the slaves; if he knew their names, Flaccus was to pass by the gift, the error being in the trade; if the names were unknown to him, the baker would be the one bequeathed.‡ The questions arising in this case belong perhaps more properly to the law of interpretation than to the law of evidence. So do the few general rules to be found on the subject, such as the rule that words were not to stand against an obvious intention,§ but where there was no ambiguity, the question of intention was not to be raised.|| The rule that a *legatum* was not to be lost by false description¶ obviously implies that it must appear by evidence that the description was false.

\* *Dig.* xxx., 50, 3; xxxii., 75.

† *Dig.* i., 17, 34. The rule applied to a *duple stipulatio* on the sale of immovable property, *Dig.* xxi., 2, 6.

‡ *Dig.* xxxiv., 5, 28.

§ *Dig.* xxxii., 69; *Coā.* vi., 43, 2.

|| *Dig.* xxxii., 25, 1.

¶ *Falsa demonstratione legatum non perimi*, *Inst.* 2, 20, 30.

*Production of Documents, &c.*

As a general rule a party, whether in a civil or criminal case, could not be forced to produce (*edere, exhibere*) documents for the inspection of his adversary.\* To this certain exceptions were admitted. In an action for a debt the debtor had a right to inspect the creditor's books,† but the creditor could not inspect the debtor's.‡ Bankers and money-lenders (*argentarii*) and their managers were bound to produce their accounts (*rationes*),§ but apparently only after the party calling for them had taken the oath of calumny.|| Inspection of a will in a testamentary suit could be enforced by *interdictum de tabulis exhibendis*.¶ Apart from the *interdictum* the judge could call for and inspect the will.\*\* In non-testamentary causes this right seems to have been confined to *acta publica*, whether civil or criminal.†† But the will was no doubt regarded as a quasi-public instrument, so that the inspection of it was scarcely an exception to the rule. Documents recited in a document produced must themselves be produced.‡‡ A witness could not be forced to produce a document if he swore that the production would injure him, or that he had never had such a document in his possession, or that he had lost it.§§

Comparison of handwriting was the subject of a considerable amount of legislation. The comparison might be made with a document produced at the trial or with one

\* *Quum neque juris neque æquitatis ratio permittat, ut alienorum instrumentorum inspicendorum potestas fieri debeat*, *Cod. ii., 1, 4.*

† *Id.*, 5.

‡ *Id.*, 6.

§ *Argentariæ mensæ exercitores rationem quæ ad se pertinet edant adjecto die et consule*, *Dig. ii., 13, 4, pr.* This was part of the Edict, and the Title in which it occurs is a mass of interpretation of the words.

|| *Dig. ii., 13, 9, 3.*

¶ *Dig. xxix., 3, 2, 8; xliii., 5; Cod. viii., 7.*

\*\* *Dig. ii., 15, 6.*

†† *Cod. ii., 2, 2.*

‡‡ *Nov. cxix., 3.*

§§ *Cod. iv., 21, 22.*

not produced. Documents produced, whether public or private, could be used for the purpose of comparison.\* A document not produced could be called for by the Judge, but could be used for the purpose of comparison only if it were proved by three witnesses to be in the handwriting of the person whose signature was in doubt, or if it had been made in presence of a notary.† The experts who gave evidence as to the handwriting were bound to take an oath that their opinion was not given for the sake of gain, enmity, or favour.‡ If the disputed signature were to a contract for the amount of more than a pound of gold, and made in the city, some additional evidence besides mere comparison must have been adduced.§ This is in accordance with the general rule that in comparison of handwriting the Judges were not to be rash in trusting the evidence of their own observation or of experts.|| If the Court came to the conclusion that in spite of his denial a defendant had signed a document, he was liable to a penalty of twenty-four *aurei* and to disability to plead the *exceptio non numerata pecuniæ*.¶

Forgery, uttering, concealment, destruction, or falsification of documents of whatever kind was punishable by the *Lex Cornelia de Falsis*, the verbiage of which, as it stands in Paulus,\*\* reminds the reader of certain English Acts of Parliament. The punishment, as in most other offences, varied with the rank of the criminal.†† A distinction was drawn between forgery and falsification, the former consisted in imitation, the latter in insertion of a false statement.‡‡ Where judgment had been given on the faith of a forged or falsified instrument it was null

\* *Nov.* xlix., 2.

† *Cod.* iv., 21, 20.

‡ *Ib.*

§ *Nov.* lxxiii., 8.

|| *Id.*, 6.

¶ *Cod.* iv., 21, 16.

\*\* *Sent.*, v., 25.

†† *Dig.* xlviii., 10 and 13.

‡‡ *Dig.* xlviii., 10, 23. Such insertion in a public document was *majestas* under the provisions of the *Lex Julia*, *Dig.* xlviii., 4, 2.

and void, the cause must be heard again *de integro*,\* and execution on the judgment was suspended.† A forged signature to an instrument of contract of sale or hiring made the instrument void on the ground that there was an absence of *consensus*, the basis of a consensual contract.‡ Theft of a *cantio*, *apocha*, &c., was theft of the sum for which the instrument was a security or receipt.§ If the document were not stolen but only damaged, an *actio Legis Aquiliæ* was the proper remedy.||

JAMES WILLIAMS.

#### IV.—THE DECLINE OF ENTAIL LAW IN SCOTLAND.

**D**URING recent Parliamentary Elections, one of the items in the programme of some of the more advanced candidates in Scotland has been “the complete “abolition of Entails.” This is not a reform of a very revolutionary nature, nor one that would greatly affect the ownership of land, but while Entails still continue things of the present, it may be interesting to note briefly the causes leading up to their origin, and then to trace the inconveniences which they were found to occasion, with the successive Legislative enactments to remedy the same, which have now deprived Entail Law in Scotland of almost all its influence.

And first with regard to the meaning of an Entail, or to use the old Scotch word “tailzie,” the word being derived from the French “tailler,” to cut. “An entail,” says Mr. Bell, in his work on *Conveyancing*, “is a deed of “conveyance of land, limiting the right of succession to a

\* Paulus, *Sent.*, v., 5, 10; *Cod.* vii., 58, 2.

† *Cod.* iv., 22, 5.

§ *Dig.* xlvii., 2, 27.

† *Id.*, 4.

|| *Dig.* xlvii., 2, 27, 3.



“particular series of heirs, and restraining these heirs from alienating or burdening the estate, or from altering the prescribed order of succession.” “Entails were intended,” says the same writer, “for the preservation and aggrandisement of a great feudal aristocracy and were perhaps a natural adjunct of the feudal system.”

It was the Feudal aristocracy who got the Act of 1685 passed, to which Act Scottish Entails practically owe their existence, being, in the words of one of the Scotch Judges, “the mere creatures of that statute.” The question whether the power of entailing did not exist at Common Law had before that date been discussed, but on account of the great doubt felt, this statute was passed to put Entails on a definite footing, and it was soon settled that there was no such power at Common Law, and that deeds of entail could only be validly constituted in accordance with the provisions of that Act. By this statute, a proprietor of land was enabled, by executing a deed of entail, to leave his estate to a certain series of heirs, who were prohibited from (1) alienating the estate, (2) contracting debt so as to affect the estate, (3) altering the order of succession, the cardinal prohibitions, as they were called. The Entail could not be brought to a close till all the heirs called under it had died, and Entails were guarded by irritant and resolute clauses contained in the Deed. By the former, prohibited Acts were rendered null and void; by the latter, the contravener forfeited his possession.

Such an excessive power of tying up an estate throughout future generations was soon found to lead to very great inconveniences and abuses.

Sir Thomas Hope, who had devised the irritant and resolute clauses, speaks of these very clauses as being “odious in tailzies.” Stair, the great Institutional writer, speaking of the clauses against alienating the estate and contracting debt, says that they are “most unfavourable

“and inconvenient, especially when absolute; for *first*,  
 “commerce is thereby hindered, which is the common  
 “interest of all mankind; *secondly*, the natural obligations  
 “of providing for wives and children are thereby hindered,  
 “which cannot lawfully be omitted; *thirdly*, it is unreason-  
 “able so to clog estates descending from predecessors, and  
 “not to leave our successors in the same freedom that our  
 “predecessors left us.”

The result of this feeling has been that Entails have always received the strictest possible construction. In the case of an ordinary Testamentary deed, the Court endeavours to find out and give effect to the intention of the Testator; but with regard to an Entail, though the intention of the maker of the deed may be quite evident, unless the words themselves sufficiently bear that meaning, no weight is given to it. Lord Campbell lays it down that “if an expression in an entail admits of two meanings, both “equally technical, grammatical, and intelligible, that “construction must be adopted which destroys the entail, “rather than that which supports it.” A good illustration of this strict mode of construction was given in the case of *The Earl of Breadalbane v. Jamieson*. An heir of entail in possession who had pulled down part of the Mansion House, in order to rebuild it on a larger scale, died before the new house was habitable. An action was raised by the next heir against the Executors of the deceased heir to force them to complete the house, or at least make it as good as it had been before. In this action, the Executors were assoilzied, a majority of the Judges holding that the heir in possession had not exceeded his proprietary rights, as the substitute heirs had no control over the heir in possession, in his exercise of such rights, except in so far as was provided in the Entail—the only proceedings competent to substitute heirs against the heir in possession being Declarator of contravention and Interdict.

Towards the close of the last century, the series of Legislative enactments began which have now so greatly diminished the force and effect of Entails. We may consider these enactments under three heads, which, to a certain extent, correspond to the three classes of objections taken by Stair to Entails, viz.: (1) Those enabling the heir of entail in possession to burden the estate with debt; (2) Those enabling him to grant provisions to wife and children; (3) Those enabling him to disentail.

(1.) *Burdening the Estate with Debt.*

The "Montgomery" Act, passed in 1770, allowed heirs of entail in possession, who had expended money on certain specified improvements on the estate, to be creditors of succeeding heirs to the extent of three-fourths of their outlay, and this might be charged on the estate to the extent of four years' rent.

By the "Rutherfurd" Act, 1848, which gave power to disentail, heirs of entail entitled to disentail, were given power to sell, alienate, dispoise, charge with debt and encumbrances, lease and feu entailed estates, in whole or in part, with the same consents as are required for a disentail; and, with the authority of the Court, to execute all necessary deeds.

It was also provided by this Act, that heirs of entail, when the entail was dated prior to 1st August, 1848 (*i.e.*, as afterwards explained, an old entail), who in future should expend money in improvements on their estates, might grant bonds of annual rent, and also charge the estates, to a certain extent, by granting a Bond and Disposition in Security.

By the Entail Amendment Act, 1868, debts of entailers or other debts for which adjudication might be got against the estate, were allowed to be charged on it by Bond and Disposition in Security.

By an Act passed in 1875 the Court was empowered to authorise an heir of entail in possession under an old entail, to borrow money, under certain circumstances, to defray the cost of improvements executed or intended to be executed by him, and to grant bonds therefor over the estate.

By an Act passed in 1878, obligations to tenants for improvements undertaken by an heir of entail devolved, on his death, on the next heir of entail, to the relief of his personal representatives; and borrowing powers were still further extended by an Act passed in 1882.

### (2.) *Granting Provisions.*

At Common Law there exists in Scotland a right to certain life-rents in the surviving spouses of heirs and heiresses, and these apply in the case of heirs of entail, unless otherwise provided in the deed, but there are no Common Law rights in the younger children. It is allowable, however, to give in the Deed itself express relaxations empowering the heir to grant such provisions to children, and to grant additional provisions to husband and wife. But the most important powers are those conferred by a Statute passed in 1824, called the "Aberdeen" Act.

Under this Act provisions might be granted by heirs or heiresses of entail to the extent of one-third of the free rent for a wife, one-half for a husband. Provisions to children were also authorised, to the following extent: in the case of there being one child only, to the extent of one year's free rent; of two, to the extent of two years' free rent; of three or more, to the extent of three years' free rent; such allowances, however, not to affect the fee, but only the heir in possession. By the "Rutherford" Act, and an Act passed in 1853, it was allowed to make provisions to children, charging them against the fee, by Bond and Disposition in Security, and by the Act of 1868, heirs-apparent

were empowered, with consent of the heirs in possession, to make the same provisions as the latter were authorised to make under the "Aberdeen" Act.

(3.) *Disentailing.*

The "Rutherford" Act first gave the power to disentail, and with regard to this power it divided Entails into two classes, old and new, the old being those dated before, and the new those on or after, 1st August, 1848. In regard to new Entails this Act provided that an heir of entail in possession, born after the date of the Entail, might disentail the estate and acquire it in fee simple, under authority of the Court; in the case of his having been born before the date of the Entail, it was necessary to have the consent of the next heir in succession, he being the heir-apparent.

In like manner, in the case of old Entails, the Act provided that an heir in possession born after 1st August, 1848, might disentail under an authority from the Court, and that an heir born before that date might disentail with consent of the next heir, he being the heir-apparent and born after 1st August, 1848. The Act also provided that *any* heir in possession under an old Entail might disentail with certain specified consents of succeeding heirs. It also made certain conditions, such as creditors opposing, which were to prevent the disentail being carried through.

Accordingly, the effect of this Act was to give the heir in possession, in most cases, power to disentail with certain consents, but only in the event of new entails, and of his having been born after the date of the Entail, could he effect a disentail without obtaining consents.

By the Entail Amendment Act, 1875, a change was made in this, and in the case of old Entails, when any of the succeeding heirs refused consent (excepting, however, the nearest heir, whose consent had still to be obtained), the

Court could order their expectancies to be valued, and, on payment of the same being made, or security being given for it, the consents might be dispensed with.

By the Act of 1882, heirs under new Entails were allowed to disentail with the same consents or payment of expectancies as heirs under old Entails. By this Act, two other important provisions were introduced :—

1st. The consent of the nearest heir might be valued and dispensed with in the same manner as that of the other heirs might by the "Rutherfurd" Act.

2nd. A creditor of an heir in possession, in respect of any debt incurred after the passing of this Act, might, when the heir was in a position to disentail, but refused to do so, apply to the Court, and, under certain conditions, force a disentail of his debtor's lands.

Thus we see how the Legislation of the last half of this century has defeated almost all the objects which Entails were intended to accomplish, and has removed almost all the inconveniences to which they were found to give rise.

After such a formidable array of hostile statutes, it is surprising that even within recent years new Entails have been created, but it must be kept in mind that while in all cases an heir in possession *can* disentail, in certain cases the value of the expectancies of succeeding heirs may be so high as practically to prohibit it.

Judging, however, from recent Legislation and popular feeling on the subject, the Act which will finally put an end to the entailing of land in Scotland seems likely to rise above the Legal horizon at no very distant date.

LAWRENCE M'LAREN.

## V.—FOREIGN MARITIME LAWS: V. PORTUGAL.

## TITLE III.

*Abandonment.*

ART. 616. Property which is insured may be abandoned in the following cases :—

- (1.) Capture.
- (2.) Embargo by order of a Foreign Power.
- (3.) Embargo by order of the Government after the voyage has begun.
- (4.) Total loss of the insured property.
- (5.) Such other cases as may be agreed on by the parties.

§1. A ship which cannot be repaired is equivalent to a ship totally lost.

B. 199, F. 369, G. 865, H. 663, 666, I. 632, R. 563, S. 773, 787, 789, Sc. 6, 256, 257. E. 211.

617. The assured may abandon to the insurer without being obliged to prove the loss of the ship, when, reckoning from the day on which the ship sailed or from the day on which the last news was received, there have been no news of her for the following terms : Six months, if her voyage was to an European Port ; One year, if to a more distant place.

§1. If the insurance is for a fixed period, after the terms prescribed in this Article have elapsed, the loss of the ship is presumed to have occurred within the insured time.

§2. If there are several successive insurances, the loss is presumed to have occurred on the day following that to which the last news refers.

§3. Nevertheless, if it is subsequently proved that the loss in fact occurred at a time not covered by the policy, the insurance must be repaid with legal interest.

B. 207, 208, F. 375, 376, G. 835, 866-868, H. 667, 674, I. 633, R. 563, S. 798, 799, Sc. 258. E. 215.

618. When a ship is deemed to be a total loss, goods which are insured and loaded on board her may be abandoned, if within three months next after the event no other ship can be obtained to re-load them and carry them to their destination.

§1. If, in the case for which provision is made in this Article, the insured goods are forwarded in another ship, the insurer is liable for damages they may sustain, expenses of loading and re-loading, warehouse rent, and watching, increase of freight and salvage up to the amount of the sum insured and so far as this sum is not exhausted will continue to bear the risks of the voyage.

B. 223-227, F. 390-394, S. 634, 820, 822-823, 824 (5), 831, 838-852, H. 478, 628, 632, 673, I. 634, 635, R. 584, S. 792-794. L. 228-231.

619. An abandonment of property insured when captured or placed under embargo can only be made after the lapse of three months from receipt of the news of the capture or embargo, if it takes place in European seas, and of six months, if it takes place elsewhere.

§1. If the goods are of a nature to suffer rapid deterioration, the terms prescribed in this Article will be reduced by one-half.

B. 220, F. 387, G. 865, 868, H. 663, 665, 668, 673, I. 636, S. 795, Sc. 259. E. 225.

620. Notice of abandonment must be given to insurers within three months, reckoning from the day on which knowledge of the disaster is obtained, if it happens in European seas; within six months, if in African seas, or those West and South of Asia and East of America; and within a year, if elsewhere.

§1. In cases of capture or embargo by order of a Government, these terms only begin to run from the termination of those prescribed in the preceding Article.



§2. When the terms prescribed by this Article have expired, the assured will not be allowed to abandon, but preserves his right of action for Average losses.

B. 203, 220, F. 373, 387, G. 865, 868, 869, H. 663, 665, 667, 668, 671, I. 637, S. 804, Sc. 260. E. 213, 225.

621. The assured, on communicating to the insurer news that he has received, may abandon and give notice to the insurer to pay the amount insured within the time fixed by the policy or by law, or may reserve his right to abandon during the legal periods.

§1. When he abandons, he must declare all insurances made or ordered, and sums borrowed on bottomry, so far as he is aware of them, on goods that are laden on board; if he fails to do this, the time for payment will be suspended until the day on which he makes such declaration, whilst no extension is allowed of the term prescribed by law for abandoning.

§2. In case of a fraudulent declaration, the assured loses all benefits of the insurance.

B. 210, 211, F. 378, 379, G. 873, H. 675, I. 638, S. 800, 804, Sc. 260, 261. E. 216, 217.

622. An abandonment only includes things which are covered by the insurance and at risk, and cannot be partial or conditional.

B. 202, F. 372, G. 870, H. 677, I. 639, S. 804, Sc. 262. E. 212.

623. Things which are insured belong to the insurer from the day on which notice of abandonment is given and either accepted by the insurer or adjudged to be valid.

§1. The assured must deliver to the insurer all documents relating to the goods insured.

B. 216, F. 385, G. 871, 872, H. 678, I. 640, R. 569, S. 803, Sc. 263. E. 223.

624. A notice of abandonment has no legal effect if the facts on which it is based are not confirmed, or did not

exist at the time at which the notice was given to the insurer.

§1. A notice of abandonment, nevertheless, is of full effect if, subsequently to it, things occur which, had they occurred previously, would have excluded the right to abandon.

B. 216, F. 385, G. 871, 872, H. 678, I. 640, R. 569, S. 803, Sc. 263. E. 223.

625. In case of capture, if the assured cannot give notice to the insurer, he may ransom the captured property without waiting for instructions from the insurer, provided, however, that in such a case he must acquaint the insurer, as soon as an opportunity offers, with the terms of the composition he has effected.

§1. The insurer has the option of taking the composition on himself or of rejecting it, and must give the assured notice of his choice within twenty-four hours of receiving the information.

§2. If he accepts the arrangement, he must, without delay, contribute his quota to the payment of the ransom in accordance with the agreed terms, and will continue to run the risks of the voyage in conformity with the terms of the policy.

§3. If he rejects the arrangement, he must pay the whole sum assured without delay, and has no claim upon any of the ransomed property.

§4. If the insurer fails to give any notice of his choice within the period prescribed, he is deemed to reject the arrangement.

§5. When the ship is ransomed, if the assured resumes possession of his property, damages sustained by it are deemed to be Average losses giving a right to compensation from the insurer, but if, in consequence of re-capture, the property passes into the hands of a third party, the assured may abandon it.

I. 641, R. 581, S. 779, 801.

## TITLE IV.

*Bottomry.*

626. A Bottomry contract must be in writing, and must state:—

- (1.) The amount borrowed.
  - (2.) The premium agreed on.
  - (3.) The things on which the loan is secured.
  - (4.) The name, description, tonnage, and nationality of the ship.
  - (5.) The name of the Commander.
  - (6.) The names and addresses of the lender and borrower.
  - (7.) A particular and specific description of the risks undertaken [*riscos tomados*] (*i.e.*, a description of the voyage or voyages).
  - (8.) Whether the loan is for one or more voyages or for a fixed time.
  - (9.) The time and place for repayment.
- §1. The deed will be dated at the time and place at which the loan is made, and must be signed by the parties contracting, who state the quality in which they execute it.
- §2. A Bottomry contract which is not in writing as prescribed in this Article, becomes a simple loan, for which the borrower is personally liable for payment of principal and interest.

B. 135, 140, F. 311, G. 684, H. 570, I. 590, S. 720, 721, Sc. 177. E. 150.

627. A Bottomry bond drawn to order is negotiable by endorsement on the same conditions, and confers the same rights and actions against sureties, as a Bill of Exchange.

- §1. An indorsee takes the place of an indorser, both with regard to the premium and losses, but the warranty of the solvency of the debtor is limited to the principal, and does not include the premium unless otherwise agreed.

B. 144, 162, 163, F. 313, 314, G. 685, 687, H. 573, I. 592, S. 722. E. 154.

628. A contract of Bottomry can only be made upon the whole or a portion of the cargo, or upon freight carried jointly or separately, and can only be effected by the Commander in the course of a voyage when there are no other means for prosecuting it.

B. 137, 157, F. 315, G. 681, H. 574, 575, 577, I. 593, 595, R. 381, S. 724, 725, Sc. 175. E. 155, 159.

It appears from this Article that Bottomry, strictly speaking, cannot be made on a ship at all, which must be mortgaged (Ch. VIII., Sec. II., *ante*), if money is to be raised upon it.

629. A loan on Bottomry of a sum in excess of the actual value of the things on which it is made is valid, so far as such value goes; the borrower is personally liable for the excess without maritime premium and with interest at the legal rate only.

§1. If there is fraud on the part of the borrower, the lender may demand that the contract be set aside and that he be paid the amount lent with legal interest.

§2. Anticipated profit on goods that are carried is not deemed to be an excess in value, if it is separately valued in the Bond.

B. 158, F. 316-318, H. 576, I. 594, S. 726. E. 156-158.

630. If the things on which the Bottomry loan is effected are lost by accident or circumstances beyond control, within the time and place and by the risks undertaken by the lender, the borrower is free.

§1. If the loss is partial, the payment of the loan is reduced to the value of the bottomried articles which are salvaged, without prejudice to other privileged debts.

§2. If the loan is on freight, repayment of the loan is reduced, in case of disaster, to the amount due from the charterers, without prejudice to other privileged debts.

§3. If the article that is bottomried is also insured, the value of it as salved will be apportioned between the principal of the bottomry loan and the amount insured.

§4. If, when the disaster happens, a portion of the bottomried goods are on shore, the loss of the lender will be limited to those on board, and he will continue to bear the risk on the goods which are safe, and which are forwarded in another ship.

§5. If all the bottomried goods are landed prior to the disaster, the borrower will pay the whole amount of the loan with the premium.

B. 164, 165, F. 325, 327, 331, G. 680, 691, H. 569, 588, I. 599, S. 719, 731, 734, 735, Sc. 174. E. 149, 165, 167, 172.

631. The lender contributes to General Average and discharges the borrower ; any agreement to the contrary is a nullity.

§1. Particular Averages are not at the charge of the lender unless so agreed, but if, in consequence of a Particular Average, the bottomried goods do not suffice for the payment of sum borrowed and the premium in full, the lender will bear the loss resulting from such Average losses.

B. 166, 167, F. 330, G. 691, 725, H. 589, I. 603, S. 732, Sc. 179. E. 171.

632. If there are several Bottomry loans contracted in the course of the same voyage, the later in date is always preferred to the earlier.

§1. Bottomry loans contracted on the same voyage, and in the same port of refuge, during the same stay, are ranked together.

I. 671, 675. •

633. The provisions of this Code concerning Marine Insurances and Averages apply to contracts of Bottomry when not incompatible with, and not altered by, this Title.

F. W. RAIKES.

## VI.—CURRENT NOTES ON INTERNATIONAL LAW.

### *Public International Law.*

#### **The Behring Sea Award.**

The Regulations for enforcing the recommendations of the Paris Arbitrators have been agreed upon by the two powers interested. In May, H.M.S. *Hyacinth* seized three Canadian vessels on the high seas for infraction of the new rules, but they were subsequently released unconditionally, by order of the British Commander-in-Chief on the Pacific Station. The reason for this step is not, at present, apparent.\*

An interesting question would arise if vessels of foreign States, not parties to the Treaty arrangements, were to attempt sealing operations within the forbidden area.

\* \* \*

#### **Hawaii.**

The Washington Government does not appear, as yet, to have acted upon the good resolutions embodied in the President's message. The "Provisional Government" still maintains its position at Honolulu, and has recently provided for an election of members of a "Constitutional Convention," which is to draft a new Constitution for the "Republic of Hawaii." Queen Liliuokalani has protested to the United States, but the fact that Admiral Walker has with his ship been recalled from Honolulu somewhat indicates the probability of President Cleveland's righteous indignation lapsing into a policy of mere *laissez-faire*.†

\* See *Times*, May 25th, and June 6th and 7th.

† *Times*, July 2nd and 24th.

### Corea.

The war between China and Japan seems likely to be prolific of International incidents. Information on the progress of events is long delayed and very unreliable when it comes to hand.

The ostensible cause of all the trouble seems, curiously enough, to lie in the provisions of a Treaty of the 18th April, 1885, by which the two combatant States conceded to each other reciprocal rights of landing troops in Corea in the event of any disturbance of a serious character arising in that country. The isolated insurgent risings, which appear to outsiders to be more or less chronic there, culminated in June last in the massing of the rebels so as to threaten the capital.\* This necessitated vigorous measures by the Chinese authorities, the success of which, however, was so dubious that Japanese troops in considerable numbers were landed. Japan then demanded from the Korean Government various reforms in the Civil, Military, and Legal Administration.† China resented this interference, and proceeded on her part to pour fresh troops into the country.

Japan, while recognising China's suzerainty, "which" "would retain its historical and ceremonial character," is reported to have insisted on (a) acquiescence by the Peking Government in the proposed reforms; (b) the recognition of an equal right in the Japanese Government of control and intervention in Korean matters; (c) the mutual withdrawal of troops on the restoration of order; and (d) that there should be no further importation of Chinese troops.‡

China objected to these claims as an infringement of her paramount rights as Suzerain, and serious military and naval collisions have occurred. There has been no formal declaration of war on either side, but about the 1st August

\* *Times*, 6th and 12th June.

† *Ibid.*, 9th and 14th July.

‡ *Times*, 30th July.

an *ex post facto* notification was made by Japan to neutral Powers of the existence of a state of hostilities.\* There had, however, already been two unfortunate incidents which an earlier notification might have avoided.

In the middle of July the British Consul-General, Mr. Gardner, and his wife, had been seized by the Japanese troops near Seoul, and though at once released with apologies, the high-handed nature of the proceedings caused a bad impression.† The sinking of a transport, the *Kow Shing*, a few days later, was a much more serious affair. This vessel, owned by a British Company, officered by British subjects, and flying the British flag, was chartered to carry Chinese troops and munitions of war to Corea. She was called upon by the Japanese man-of-war, *Naniwa*, to stop and to follow the latter to Japan. The captain pointed out to the Japanese commander that the ship was British, and that the existence of a state of war had not been intimated to Great Britain, and claimed the right at any rate to return to China. Without more ado the *Naniwa* opened fire upon her with machine guns, and sank her, with nearly every soul on board, by means of a torpedo. Accounts vary in some details, but nearly all agree so far. Several European officers were saved and apparently conveyed to Japan and imprisoned until released at the demand of the British admiral.‡

From any point of view it would appear clear that the Japanese commander committed a grave error of judgment and infraction of International comity. In the first place, the best reports support a very serious charge against the Japanese vessel of so far violating humanitarian considerations as to shoot down the unfortunate Chinese when struggling for life in the

• \* *Times*, 2nd August.

† *Times*, 19th July.

‡ See *Times*, especially for 2nd August.



water. The summary destruction by torpedoes of a practically unarmed merchant vessel would have been a sufficiently grave responsibility without this addition. In point of fact, there is nothing laid down in definite terms in the Geneva Convention, or the St. Petersburg Declaration, which would exactly apply to the Japanese proceedings, and it would doubtless be contended that they were necessitated by the exigencies of war, and in this respect not opposed to any actual rule of International Law. This is true, but they were clearly at variance with the broad principles now generally accepted as morally binding, which found an unauthoritative but significant expression in Articles 12 and 13 of the Declaration of the Brussels Conference.

The further question arises as to whether the action of the Japanese was not, in the absence of any intimation of a state of hostilities, a gross violation of neutral rights.

It is quite clear in these days that, as between the contending parties themselves, no formal declaration of war is necessary.\* Any discussion of this point would seem to be pure casuistry. As regards third parties, however, it is a well supported and altogether reasonable view that either some sort of clear notice should be given, in order to throw upon them the duties of neutrality (see Baker's Halleck, *International Law*, 1893, Vol. I., p. 542); or at any rate that there should be proof that the existence of war *de facto* was so public and notorious as to be in fact known to the neutral (see Hautefeuille, *Des Droits et Devoirs des Nations Neutres*, III., ch. 1; Vattel, *Droit des Gens*, III., ch. 4, § 51, etc.). In the present case, the *Kow Shing* affair was itself the real beginning of any serious war-like operations, so that constructive notice of war can hardly be imputed. To admit otherwise, is to admit the

\* See the ordinary text-books, and also Maurice's *Hostilities without Declaration of War*, and articles by Prof. Holland and M. Féraud-Giraud in the *Revue de Droit International*, for 1885.

extraordinary principle that a war between A. and B. may be legitimately *commenced* and declared by a sudden attack on C.'s property, in which A. has a slight interest.\*

But even apart from this fundamental violation of International Law, it was clearly the duty of the Japanese, under any circumstances, to conduct the *Kow Shing* to the nearest Japanese port for adjudication by a Court of Prize. Moreover, according to the best information we at present possess, the captain of the ill-fated vessel offered to take her back to her port of departure, if necessary, under Japanese escort, though there seems to be a probability that this very proper course would have been forcibly prevented by the Chinese troops on board.

If such a taking of the *Kow Shing* into a Japanese port was rendered impossible, owing to the opposition of the Chinese troops on board, the ship should have been captured in the usual way. It seems absurd to suppose that a fully equipped man-of-war, with available consorts to support her, could not have taken possession of an unarmed merchant vessel without summarily blowing her out of the water.

The cargo of the *Kow Shing* was at the worst contraband pure and simple (munitions of war), and analogues of contraband in the shape of troops. In such a case, the ship would have been clearly liable to condemnation (see *The Carolina*, 4 Rob. 256; *The Orozembo*, 6 Rob. 433, etc.; *The Friendship*, 6 Rob. 422, etc.).

The wanton destruction of life and property evinced in the reported facts of the case can hardly tend to procure for the offending party the sympathy of civilised nations. Motives of policy as regards Great Britain may very likely help to smooth down the difficulties created by the Japanese, but certainly a strict investigation

\* This appears to be the view of Professor Holland in his recent letter to the *Times* on the subject. We can only say, with respect, that we entirely differ from his opinion.

should be insisted upon, followed by such pecuniary compensation and speedy punishment of the parties as the facts of the case render just.

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#### The Institute of International Law at Paris.

There is a capital report of the meeting of the Institute, for 1894, held in Paris, in our contemporary, the *Revue de Droit International*, Brussels, Vol. 26, No. 3.

The chief topics dealt with were the questions as to the limits of Jurisdiction in Territorial Waters, and the principles as to Contraband of War. As regards the former question, the resolutions finally arrived at declared amongst other things that Territorial Waters extend to six marine miles (reckoning 60 miles to each degree of latitude) from low-water mark, or in the case of bays and straits where their width does not exceed the width of 12 marine miles at the mouth, "à moins qu'un usage continu et séculaire n'ait consacré une longueur plus grande."

The resolutions as to Contraband are very interesting, and comprise the following:—Art. 3 lays down that Contraband proper includes articles immediately capable of being used for purposes of war, and machinery and instruments for manufacturing such articles. Art. 5 enunciates that Articles *ancipitis usûs* are only contraband, if destined for the belligerent forces or for belligerent operations. Art. 8, continuing this subject, declares that if the vessel carrying such articles is ostensibly *en route* for a neutral port, the presumption is that this is her real destination. This presumption can, however, be rebutted by evidence to the contrary, in which case, a hostile destination must be conclusively proved by a minute investigation of all the circumstances of the case.

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#### Extradition.

In the case of *In re Meunier* (L.R. [1894] 2 Q.B. 415), a somewhat lame attempt was made to obtain the discharge

of an Anarchist accused of two explosive outrages in France. The only points of any material interest decided in the case were (1) that the mere fact (assuming it to exist) that the evidence on which the committal is based was the uncorroborated evidence of an accomplice, does not necessarily invalidate the committal, and (2) that offences directed primarily against the general body of private citizens, even though "secondarily and incidentally . . . against some particular Government," are not "political" offences within the meaning of the Extradition Act. The case was clearly distinguishable from *In re Castioni*, L.R. [1891] 1 Q.B. 149.

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#### Privileges of Ambassadors.

The decision of the Court of Appeal in the case of *Musurus Bey v. Gadban and Others* (see our last issue), has now been fully reported in L.R. [1894] 2 Q.B. 352. The order of the Divisional Court was upheld on all points. The Lords Justices gave utterance to some valuable *dicta* on the general position and immunity of Ambassadors, and referred with approval to the case of the *Magdalena Steam Navigation Co. v. Martin*, 2 E. & E. 94.

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#### Private International Law.

##### Foreign Judgments.

A very curious point arose in the case of *In re Low; Bland v. Low*, 7 Rep. 120. A debtor had died domiciled in England, but leaving property both in England and Scotland. A creditor whose debt was statute-barred in the former country but not in the latter, sued the administratrix in Scotland and recovered judgment. He then sought to prove in the administration in England, for the Scotch judgment debt. The Court of Appeal held, distinguishing *Phosphate Sewage Co. v. Molleson*, 4 App. Cas. 801, that he was entitled to do so, as the Scotch judgment was a new cause of action. It was, however, suggested by the Court that the adminis-

tratrix might very probably have succeeded at an earlier stage in obtaining an order in this country restraining the plaintiff from proceeding with his Scotch action and from registering his judgment when obtained (cf. *Graham v. Maxwell*, 1 Mac. & G. 71).

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#### Contracts.

The case of *Hamlyn v. Talisker Distillery*, referred to in our last issue, has been well reported in 6 Rep. 14. The judgments of the Lords contain a very clear enunciation of the principles applicable to such cases. It appears that the Court of Session in Scotland had decided that the *lex loci solutionis* of the main portion of the contract conclusively determined the rights of the parties under it. The Lord Chancellor most clearly repudiates this contention. He says in words which may almost serve as a final statement of the general rule adopted by our Courts in recent times—particularly since the *Missouri Case*, 42 Ch. D. 321—"When a contract is entered into between parties residing in different places, and where different systems of law prevail, it is a question in each case, with reference to what law the parties contracted, and according to what law it was their intention that their rights either under the whole or any part of the contract should be determined. In considering what law is to govern, no doubt the *lex loci solutionis* is a matter of great importance. The *lex loci contractus* is also of great importance . . . but neither of them is conclusive."

Lord Watson incidentally notes that "English and Scotch decisions differ in regard to the relative weight which ought to be attributed to them [*i.e.*, *loci contractus* and *solutionis*] when the place of contracting is in one forum and the place of performance in another."

It is curious that Mr. Westlake, in the latest edition of his valuable work on *Private International Law* (§ 212, and

note), adheres to his earlier statement of the rule on the subject, and refuses to recognise the principles most clearly laid down in recent decisions. As long ago as 1888, we suggested in this *Review* (No. CCLXX., for Nov., 1888, Art. *The Present Position of the Lex Loci Contractus*) as the true rule of law, the principles laid down in the following year by the Court of Appeal in the *Missouri Case*, and now finally established by the decision of the House of Lords in the case under discussion.

JOHN M. GOVER.

## Quarterly Notes.

### The Royal Commission on Labour and Agricultural Legislation.

We have before us the Parts containing the *Reports* of the Assistant Commissioners under the Royal Commission on Labour which deal with the present position and apparent desires and requirements of the Agricultural Labourer in Scotland (*Royal Commission on Labour. The Agricultural Labourer. Vol. III. Scotland. Parts I. and II. Printed for Her Majesty's Stationery Office by Eyre and Spottiswoode. London. 1893*). These Parts contain Reports, in Part I., by one of our own valued contributors, Mr. Henry Rutherford, and the late Mr. G. R. Gillespie; and in Part II. by Mr. R. Hunter Pringle and Mr. Edward Wilkinson, all Assistant Commissioners. Three at least out of these four Assistant Commissioners, undoubtedly, had a personal acquaintance with the country in which they were selected to hold their enquiry, and some of them had also a further practical knowledge of the relations prevalent at the time between landlord and tenant in Scotland. It appears to us that, on the whole, the conclusions at which they have arrived, by independent roads, are very much the

same, and that there is singularly little discoverable in the existing state of Scottish Agricultural life to warrant any demand upon the activity of the Legislation.

Thus Mr. Rutherford, in the final paragraphs of his Summary Report (Vol. III. *Scotland*. Part I., p. 34), states as his general conclusion that, while certain reforms of what may be called an Administrative character appear to be required, on the other hand, "suggestions of a character to interfere with the management of labour ought to be cautiously made." Of these suggestions, those connected with "a slight variation of holiday arrangements (if this can be effected without imperilling the admitted liberality of the employer)" and a "further improvement in cottage accommodation" are among the most likely points to arouse a desire for Legislation. Nevertheless, we are ourselves, from our own recollection of various parts (so widely separated as Kintyre and Galloway) of the country travelled by Mr. Rutherford, as well as from agreement with the broad principle which he lays down, inclined to agree with him in "not" being "prepared to say that the freedom now existing should be disturbed by legislative action." We should even probably have stated our view in stronger language, being free from any official character and responsibility. The late Mr. G. R. Gillespie's "conclusion as to the general relations between masters and men" was, that they were "good." A crofter, who had been a farm servant, said to him that, in his opinion, "the farm servant is the best paid man in our country." If this be so, in the opinion of those who have had personal experience of the position, it is difficult to see what Legislation can be required to better the position of the Agricultural Labourer.

Various causes are, of course, noted by the Assistant Commissioners as being at work, causing changes in the existing situation as compared with that of the previous generation of employers and employed. But one of these

causes is the spread of education, and that is a cause which present-day Legislation is not likely to remove. It is stated by Mr. Gillespie, in one of his Reports (Scotland, Part I., p. 109), that "the spread of education is said, as one of its first effects, especially among girls, to have bred an ambition to have less laborious and coarse work than country work necessarily is." And this feeling is not confined to the women, for Mr. Gillespie continues, "It is said that for every situation for a clerk which is vacant you will have several applicants, who, even if they get it, will have but a starvation maintenance as compared with what they might have enjoyed as ploughmen." This, of course, is a feeling which operates to drive the younger generation of both sexes into towns, and so leads to a considerable depopulation of the country districts, a phenomenon which, as Mr. Rutherford rightly points out, has been noticed by Dr. Longstaff in a Paper on *Rural Depopulation*, which we ourselves heard read before the Royal Statistical Society, 20th June, 1893 (*Journal*, Vol. LVI., Part III., for September, 1893), as being general throughout the greater part of Europe, as well as North America and Australia. In support of this view it may be remarked that the tendency to the overcrowding of towns by immigration from the country is recognised as a question of International interest by the place assigned to it in the Programme of the Division of Demography for the International Congress of Hygiene and Demography about to sit at Buda-Pesth, where it may be expected to attract expressions of expert opinion from all the countries represented in that thoroughly Cosmopolitan gathering. We may therefore hope to return to the consideration of this portion of the subject of the enquiry with some profit, when we are in possession of the facts and views laid before the Buda-Pesth Congress. For the present we do not see that any Legislation in the United Kingdom is likely to stop



- a phenomenon so widely prevalent as is the modern overpopulation of towns, and consequent depopulation of the country. When Hungary suffers, not to speak of North America and Australia, Great Britain is not likely to be free.

The general opinion of the Assistant Commissioners as to Allotments appears to be that the Legislation on that subject has been a failure in Scotland, as we have from time to time pointed out, in this *Review*, that it has been in England. The causes are no doubt locally varied, but the result is the same. In England, the first rush of absurdly large demands for allotments soon gave place to a greatly lowered demand, and there is now often more difficulty in finding labouring men willing to apply than landlords willing to offer. In Scotland one acre was the maximum allowed to be applied for, and the limit, reasonable as it appears, would yet seem to have proved too large for its practical working by the Scottish Agricultural Labourer. The result has frequently been that, as is noted of the estate of the Marquis of Bute, in the Island of Bute, only two allotments out of forty-one that were made under the Act remain, "nearly the whole" having thus been "allowed to fall back to the estate." Mr. Rutherford's conclusion, which is practically identical with that already expressed in these pages, is that "under present circumstances the appropriation of land for occupation by farm servants is not keenly desired by those most interested." And under these circumstances, we should say, the Statute Book has been loaded with unnecessary Legislation, which, in our opinion, is a serious evil.

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#### **An Ordinary of Scottish Arms and the Law of Arms in Scotland.**

The handsome volume which the new Lyon King of Arms, Mr. J. Balfour Paul, Advocate, whom we remember with pleasure as a *confrère* during his editorship of the *umquhile*

*Scottish Law Magazine*, has devoted to the subject of the distinguished office which he now fills, naturally calls for some notice at our hands. For we have always upheld in these pages the Legal interest which properly belongs to Armorial and Genealogical studies, and we have recalled with pleasure the fact of the Legal training of such eminent Genealogical and Heraldic writers as the late John Riddell, and George Seton, happily still among us.

The marvellous subtlety, indeed, of John Riddell's legal mind, and his, to this day probably, unrivalled knowledge of the information lying buried under the dust of ages in Scottish Charter-Chests, cannot but be patent to all who have any acquaintance with Scottish Peerage Law and Scottish Genealogy.

Mr. Balfour Paul has not attempted much, as yet, in the way of generalising his own stores of knowledge, but has come into the field with the results of much, we fear it must be called, thankless labour in the shape of an *Ordinary* (*An Ordinary of Arms contained in the Public Register of all Arms and Bearings in Scotland*. By J. BALFOUR PAUL, Lyon King of Arms. Edinburgh, William Green and Sons. 1893). Work of this kind is in the nature of index-making—very toilsome, but rarely meeting with the recognition which such hard labour really deserves. We have done enough of it ourselves to have something of a fellow-feeling for the present Lyon, and we think he is entitled to our sincere thanks for what he has accomplished in the field which he has chosen for his first publication since his accession to office in succession to our late valued friend, George Burnett.

What Mr. Paul has set before us, however, is not to our mind so full of interest as a slight extension of his actual jurisdiction, if it be really such, would have made it. We think that he should have included the coats on the Register of his famous predecessor, Sir David Lindsay of the Mount, although they are not in the custody of the Lyon Office.

Without this matter, which is really not extraneous save in a highly technical sense, if at all, the list of names on the Public Register of Scottish Arms shews but poorly. Our thesis is that the coats on Sir David Lindsay's Register have a right to be considered as being on the Public Register, since the Privy Council of Scotland, as the present Lyon himself admits, practically authenticated them, in the terms which he cites (p. vi.) :—"This Booke and register of armes done by Sir David Lindesay of the Month, Lyone King of Armes, reg. Ja. 5 contienes 106 leaves which register was approve be the Lordis of His Majesties most honourable Privie Counsale at Halierudehous 9 December 1630." This was done when Sir James Balfour of Denmilne was Lyon King, a somewhat curious coincidence with regard to the action of his successor, Mr. Balfour Paul. We deplore as much as the present Lyon can the comparatively little attention which has been paid in Scotland to the Legislation of the country in the matter of the bearing of arms and the registration of the same. It is unfortunate for the Lyon that he should somehow have come to be looked upon as a kind of natural enemy, while in truth he ought to be, and would generally be found to be in fact, the friend of all who wish to have authority for their bearings. It can only be a pleasure to a Lyon King with anything of the spirit of Davie Lindsay or George Burnett in him (to name but two Lyons at different ends of the ladder of Time) to assist in the matriculation of a duly differenced coat for a cadet, and of the relative quarterings, if any. The work which such matriculation involves is far heavier than that of grants to *novi homines*, or applicants under Testamentary injunctions, and it is work of which the general public hears little and knows less. We happen to know something of some cases of both kinds named which have come under the consideration of the present Lyon, and we are duly sensible of the Judicial weighing of

evidence, and the searching of Records which cases of matriculation involve when, as may not unfrequently happen in Scotland, they have to be carried back to a date anterior to the earliest Scottish Registration Statute, the Act 1592. We hope to see Mr. Balfour Paul do good work in other parts of the varied field of Heraldry, where the interest may be even wider and the drudgery less severe, but in the meanwhile we are much beholden to him for what is, we trust, far from being the last edition of his *Ordinary of Scottish Arms*.

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**The 11th International Medical Congress, Rome-Florence, April, 1894, and the 8th International Congress of Hygiene and Demography, Buda-Pesth, September, 1894.**

Both of these Congresses, the former of which has held a most successful session alike in the Eternal City and in the City of Flowers in April last, and the latter of which is about to hold what promises to be a no less successful session in the twin City on the Blue Danube in September, embrace within their programme much that is of interest to the Jurist no less than to the student of Medical, Sanitary, and Statistical Science.

During the recent session of the International Medical Congress, the question of Quarantine was considered from the point of view of International Law in a Paper, *La Quarantaine en Droit International*, contributed by Mr. C. H. E. Carmichael, M.A., who was the Delegate of the Association for the Reform and Codification of the Law of Nations, and whose Paper was warmly approved by Professor Ruata, of the University of Perugia, himself the Editor of a Sanitary periodical, and the author of works dealing with this special branch of Sanitary Law. In the Division of Hydrology, which was actually the Third International Congress of Hydrology and Climatology, held for this occasion in union with the International Medical Congress,—there was a considerable amount of criticism of certain features in the existing Sanitary Legislation for the

Kingdom of Italy, on a point upon which the general body of Italian Hydologists expressed strongly their desire for a revision of that Legislation, in the sense of a real instead of a perfunctory investigation by Government into the adequacy of the apparatus and accommodation for Hydrological operations at the establishments which are now so numerous and increasing throughout Italy.

The Minister of Public Instruction, Guido Baccelli, distinguished alike as a Classical Scholar and a man of Science, circulated among the members of the Congress a French version of the recent Italian Sanitary Legislation, and we have also received the publication of the Italian Association of Hydrology and Climatology (*L'Idrologia e la Climatologia*. Turin. Printed for the Association. 1894), to both of which we shall have occasion to return, in connection with some of the various points of Legal interest which arose in Rome, and which it may be interesting to compare with points arising at Buda-Pesth. There can be no doubt that Congresses of the magnitude of those which we are here considering exercise a widespread influence in educated circles, and have a direct interest for the Jurist and the Statesman, no less than for the man of Science strictly so called, whether his particular science be Medicine, Hygiene, or Statistics, and we, therefore, desire to keep our readers informed of the points at which the various subjects treated touch the more special interests of Jurisprudence, whether in its Scientific or its Practical aspect.

## Reviews.

*Abstract of Reported Cases Relating to Trade Marks (1876-92). With the Statutes and Rules.* By JAMES AUSTEN-CARTMELL, M.A., of Lincoln's Inn, Barrister-at-Law. Sweet and Maxwell. 1893.

The subject of Mr. Austen-Cartmell's volume is one which frequently makes its appearance in our *Quarterly Digest*, and

which is of considerable importance in Law from an International as well as from a National point of view. Many of the cases in this book are, indeed, of an International interest, though technically cases in Municipal Law. It is scarcely possible to turn over half-a-dozen pages of the work before us without coming upon some cases which involves large International interests. Thus we find the two cases involving the use of Baron Liebig's name, which is now *publici juris*, viz., *Anderson v. Liebig's Extract of Meat Co.*, 45 L.T. 757, November, 1881, and *Re Anderson's Trade Mark*, 54 L.J. Ch. 1084, C.A., August, 1885. In regard to these cases it seems an awkward result of the alphabetical arrangement that the Court of Appeal case should meet our eye before the case in the Court below. Is not this somewhat of the type of the familiar cart before the horse, if we may be allowed so homely a phrase in so solemn a Judicial connotation?

There would seem to be something *prima facie* distinctive about the use of such a name as that of Baron Liebig, but the Court of Appeal held that the name of that distinguished chemist was *publici juris*. It is legally, therefore, no more distinctive than Smith, or Brown, or Jones, or Robinson, which seems hard upon fame earned by a life devoted to scientific research.

In connection with the *Apollinaris Company* cases (*Apollinaris Company v. Herrfeldt*, 4 R.P.C. 478, C.A., Oct., 1887, *Re the Apollinaris Company's Trade Mark*, 8 R.P.C. 137, C.A., Dec., 1890), it seems rather curious to read of a certain "General Hunyadi Janos" as the person immortalised in our Reports and on the labels affixed to bottles of mineral water. • It may be doubted whether John Hunyadi, the deliverer of Western Europe from the domination of the Ottoman power, would recognise himself under such a description. Curiously enough, the proprietor of the spring at Buda-Pesth named after the celebrated patriot hero, Herr Andreas Saxlehner, has offered to entertain the members of the International Congress of Hygiene and Demography at his works, during the session of that cosmopolitan gathering.

Trade Mark cases seem often to turn on very technical points, not so much of imputable desire to deceive the public, which is itself a point not always easy to decide, but of how far a particular device, or word, or picture, or combination thereof, can be registered as a Trade Mark in this country. What constitutes a "fancy word" is a point apparently drawing forth great subtlety on the part of Her Majesty's Judges. To the

less learned mind, it may not unfrequently seem a question quite as hard to solve as the Scriptural problem, the key of which has not been given us, why the one should be taken and the other left.

Mr. Cartmell's book will, no doubt, find its way to many a practitioner's shelves, and develop into a second edition as the cases accumulate.

*The Law relating to the Property of Married Persons.* By DAVID MURRAY, M.A., Hon. LL.D. Glasg. ; Member of the Faculty of Procurators in Glasgow. Glasgow : Maclehose, 1891.

It will be noticed that the mere title of this book does not convey any information as to the locality of the law with which it deals. It may be stated, at once, that, as might be conjectured from the name and titles of the author and the locality of publication, it is in the main, a Scotch law book, but it must be added that it contains a good deal of English and other law which is not Scotch. We learn that in Scotland, as elsewhere, the good old maxim "What's yours is mine, what's mine's my own" might, until recently, be fully applied to the male constituent of the "twain" conventionally supposed to be "one flesh." Dr. Murray is justly indignant at "the lying phrase, goods in communion"; he shows that the idea of a wife's property being her own and not the husband's was ruled to be against the laws of Nature and the rules of Morality; he shews that even if the husband, purported to renounce his rights before marriage, they would run back upon him, "as water thrown upon a higher ground doth ever return," the moment the marriage was complete. Dr. Murray's book contains much useful information, and the arrangement of subjects is logical and satisfactory. It is to be regretted, however, that it is not always clear what particular law is being treated. At p. 65 we find the title "The Married Women's Property (Scotland) Act, 1881," which title seems to govern all down to p. 78; yet at p. 79, we come, to our surprise, on the title "The Present Law," as if the Act of 1881, instead of being now in force, had been a thing of the past. At pp. 12, 13, we read that the executrix of a deceased wife claimed from her husband, evidently in a Scotch case, the value of seven stones of lint promised to her as Morning gift, a rose noble gifted by the husband to the wife *ad fores ecclesie*, and the wedding ring; immediately after, we are told

that the Prayer-Book of King Edward VI. directed the husband, at the marriage, to "give unto the woman a ring, and other tokens of sponage," &c.; an apparently singular juxtaposition which recalls the forgotten fact that Knox and other Scottish Reformers were not the opponents of Liturgical worship that the Post-Revolution form of Scottish Presbyterianism has caused them to be taken for.

Dr. Murray's notes contain a good many illustrative fragments of laws of various countries; thus, *a propos* of the term "Gown" or "Lady's gown" (a morsel of separate property given to a wife by a purchaser of a husband's land), it is recorded that in the old Welsh laws a wife's "gowyn is, if she detected her husband with another woman, let him pay her six score pence for the first offence, for the second one pound; if she detects him a third time, she can separate from him, without losing anything that belongs to her." There is a good Appendix of Statutes; those of early date shew that legislation was sometimes necessary to save married women from being robbed by tricks of the law even of the little which the law gave them. An enactment of this kind, passed in 1503, is so quaint that we cannot refrain from quoting it:—

"ITEM.—It is statute and ordained, anent the exceptions proponed against widowes, persewand and followand their brieves of teirce, or the profite of their teirce, quhilk is oftymes proponed against thay widowes, that they were not lauchful wives to the persones their husbandes, be quhome they follow their said teirce; That therefore, quhair the matrimonie was not accused in their life-times, and that the woman askand this teirce, beand repute and halden as his lauchful wife in his life-time, sall be teirced, and bruike her teirce, but ony impediment or exceptions to be proponed against her, ay and quhil it be clearely decerned, and sentence given, that scho was not his lauchful wife, and that scho suld not have ane lauchful teirce therefore."

Not being ourselves members of the College of Justice, we would speak with becoming modesty of the value of Dr. Murray's book as regards the help it would give in a "guid ganging plea"; we may venture, however, to say that, wherever we have tested his statements of Scotch law with the decisions to which he refers, we have found them to be correct. The production of the book would do credit to any London publisher, and well sustains the reputation of the Printers to the University of Glasgow.



*Kant's Principles of Politics, including his Essay on Perpetual Peace.* Edited and translated by W. HASTIE, B.D. Edinburgh: T. and T. Clark. 1891.

This valuable little book has a special claim upon our attention at the present time, when so much is being said and written on the subject of Peace, Arbitration, Disarmament, and other kindred questions easier to raise than to solve. Kant wanted to see the state of Peace "established," and with this end in view drafted a series of Articles, the first of which was that the Civil Constitution in every State should be "Republican," but by this term he did not mean Anti-Monarchical, or at any rate Non-Monarchical, but only the opposite to Despotic. Russia, as at present governed, could not have answered to his definition, but the United Kingdom would, from his point of view, have been as truly Republican as the United States. His second Article involved a "Federation of Free States," which is something even wider, as conceived by him, we imagine, than the United States of Europe, as dreamed of by some Philosophical Jurists subsequent to Kant's days. His third Article involved the restriction of the rights of men as Citizens of the World, in what he called a "cosmopolitical system," to conditions of universal Hospitality. By this he meant the stranger's right, in consequence of his arrival on a foreign soil, not to be treated by its citizens as an enemy, which may seem a somewhat mild claim to make on behalf of men. His right was to be not that of a guest, but the right of resort. The Social relations between the various Peoples of the World, according to Kant, had "advanced everywhere so far that a violation of Right in *one* place of the earth is felt all over it." This, true in Kant's day, is truer by far in our day. True also is it, now as then, we believe, that "Perpetual Peace is no empty idea, but a practical thing, which, through its gradual solution, is coming always nearer its final realisation."

*An Outline of Legal Philosophy.* By W. A. WATT, M.A., LL.B., Member of the Faculty of Procurators, Glasgow. Edinburgh: T. and T. Clark. 1893.

This is an interesting volume, belonging, of course, as the title indicates, mainly to the Speculative and Scientific aspect of Law. Nevertheless, it covers a good deal of practical

ground in some of the questions which of necessity come up for consideration, and it is always suggestive.

Mr. Watt admits that there is much value in the work done by the Analytical Jurists, and that is perhaps a rather large admission now-a-days. It is surely no small thing for any set of men to have "sketched out a clear, if not wholly satisfactory, representation" of the contents of Law, which, as Mr. Watt says, "can be quite fairly separated from their theories of the origin and source of law." To Mr. Watt it is, indeed, "apparent" that "most of the divisions which the analysis yields, when pushed far enough, break down." This seems to leave us not much more than Austin *minus* Austin's analytical divisions. But this is the result of looking at the subject from a "philosophic point of view," under which "all legal divisions lose their absolute nature, and are seen to be only relatively of importance." Much the same fate befalls Truth in some schools of Continental Thought. There is no absolute Truth, we once heard a distinguished German Jurist say, in a mainly German gathering, which was yet of a Cosmopolitan character, and composed of persons who, whether Germans or not, held a different view as to Truth. The eminent speaker seemed much surprised when his hearers expressed an audible dissent from his views, and compromised by saying that at least that was his view of those whose Theology he was representing on the occasion to which we refer.

Mr. Watt divides Law, for the purposes of his work, under the heads of Public, Private, International, and Scientific. This may seem a rather odd division, as it might appear to deny a scientific character to the other branches of the subject, and it is not without a certain apparent analogy to the celebrated Faith, Hope, Charity, and Astronomy, whose figures, so legend runs, are to be seen at the four corners of the tower of a well-known College Chapel at Oxford. But on looking into the matter a little more closely we find that by Scientific Law, Mr. Watt means what is ordinarily called Private International Law, and which presents a considerable *crux* to many Jurists. For, notwithstanding the volumes which have been written on this branch of Jurisprudence (if it be a branch), from Savigny to Westlake, there are to be found not a few who deny that such a thing as Private International Law exists. Of course, if it does not exist, *cadit questio*, and nobody, whether

Jurist, or Professor, or Practitioner, need trouble his head about it. But Mr. Watt, having admitted its existence, must needs define it, and though his actual definition does not help us to see why he has given it the special distinctive epithet of "Scientific Law," we get a glimpse of that reason very shortly after the occurrence of the definition (p. 65). Private International Law, says Mr. Watt, is "a body of rules which are used to determine what law is applicable to a given case when any doubt exists on the matter." These rules, he continues, are "fairly definite, and are based upon scientific principles." Moreover, and this is the point at which we arrive at the International character which the definition supplied by Mr. Watt does not connote,—so far as they are scientific rules at all,—"and this," he rightly says, "is an important point,—they are universal. So far as they are not universal in their application, they must be pronounced defective." The question then arises, "whether it is in all possible cases, or only in certain doubtful instances," that the rules of Private International Law apply. Mr. Watt's sympathies are with what he calls the more advanced doctrine, "that the system, so far as it is a system, applies to every legal relation." If it only applies to difficult cases, says Mr. Watt, in effect, first define your "easy" cases, but this has not been done. To say that this has not been done is not necessarily the same thing as to say that it cannot be done, but the argument on Mr. Watt's side, which is substantially that of Mr. W. Galbraith Miller in his able *Lectures on the Philosophy of Law* (London. Griffin & Co., 1884), p. 240, seems a fair one. Mr. Miller, while warning his readers of the unorthodox character of his view, justifies it, to his own mind, at least, in a note, by pointing out that what Lord Westbury, in 1863, in *Cookney v. Anderson*, had taken away with one hand, so to speak, he restored with the other by the legal fiction that the doctrines of Private International Law are part of the Municipal Law of England, "and so," as Mr. Miller puts it, "we may reach the law of any part of the world." But, we may perhaps be permitted to ask, with Mr. Miller, "Is it not better to state the fact directly without the interposition of a fiction?" That is a question not altogether easy to answer. The real answer to it may be that Legal Fictions are somewhat *incipitibus usus*. We have only touched a small portion of the fringe of Mr. Watt's volume, but we hope we may have shown something of its value and its interest.

# Quarterly Digest.

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# Quarterly Digest

OF

## ALL REPORTED CASES,

IN THE

Law Reports, Law Journal Reports, Law Times  
Reports, and Weekly Reporter,

FOR MAY, JUNE, AND JULY, 1894.

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Barrister-at-Law.

### Administration:—

- (i.) **Ch. D.**—*Business—Indemnity—Creditors.*—Executors carried on the business of a testator in pursuance of directions in the will, and incurred trade debts. The trade creditors claimed that they were entitled, through the executors' right of indemnity, to payment out of the estate. The executors had made default in rendering accounts, but not in paying money. *Held*, that the right of indemnity was not lost, and that the creditors were entitled to prove against the estate.—*Kidd v. Kidd*, 70 L.T. 648.
- (ii.) **P. D.**—*Person of Unsound Mind but not lawfully detained as a Lunatic*—*Lunacy Act, 1890, s. 116, sub-s. 1 (d).*—The sole next-of-kin of the intestate was a person "not lawfully detained as a lunatic, and not found a lunatic by inquisition, but, through mental infirmity arising from age, incapable of managing her affairs." Her estate was administered by a person appointed to act with the powers of a committee. The Court made a grant of administration to such person for the use and benefit of the next-of-kin.—*In the goods of Leese*, L.R. [1894] P. 160.

### Adulteration:—

- (iii.) **Q. B. D.**—*Summons—Amendment.*—A consignor of milk was summoned under sect. 6 of the Sale of Food and Drugs Act, 1875, and the evidence disclosed an offence under sect. 3 of the Amendment Act, 1879. *Held*, that the variance was curable under sect. 1 of the Summary Jurisdiction Act, 1848, and that he was rightly convicted.—*Hiett v. Ward*, 70 L.T. 374.

**Animals :—**

- (i.) **Q. B. D.**—*Cruelty to—Domestic Animals—Lions—Cruelty to Animals. Acts, 1849, ss. 2, 29; 1854, s. 3.*—Lions kept in a cage for exhibition are not "domestic animals," and an indictment for cruelly treating them will not lie.—*Harper v. Marcks*, L.R. [1894] 2 Q.B. 319.

**Arbitration :—**

- (ii.) **Q. B. D.**—*Costs.*—An order of reference referred the whole cause to a special referee for trial. The referee awarded that nothing was due to the plaintiff, and directed and awarded that the defendants should recover the costs of the action and award. *Held*, that the costs of the reference were included in the costs of the action, and that the defendants were entitled to recover them.—*Patten v. West of England Iron, Timber, and Charcoal Co.*, L.R. [1894] 2 Q.B. 159; 42 W.R. 522.
- (iii.) **C. A.**—*Staying Proceedings—"Step in Proceedings"—Arbitration Act, 1889, s. 4.*—Decision of Ch. D. (*see* Vol. 19, p. 32, v.) affirmed.—*Ives and Barker v. Willans*, 70 L.T. 674; 42 W.R. 483.

**Bailment :—**

- (iv.) **Q. B. D.**—*Negligence—Licensee—Master and Servant.*—A committee hired the defendants' hall for a concert. The memorandum of hiring did not mention a rehearsal, but one took place. The plaintiff, without request or notice to the hall-keeper, left his violin in a room attached to the hall. The hall-keeper was the defendants' servant, and in order to light the gas in the course of his duty, he moved the violin and broke it. *Held*, that there had been no such negligence on his part as to make the defendants liable.—*Newith v. Over Darwen Co-operative Society*, 63 L.J. Q.B. 299; 70 L.T. 374.

**Banker :—**

- (v.) **Q. B. D.**—*Crossed Cheque—Forged Indorsement—Protection to Banker—Bills of Exchange Act, 1882, s. 82.*—The word "customer" in the section above mentioned, involves use and habit; and a banker who collects a cheque for a stranger cannot claim the protection of the section if it turns out that the stranger has no title to the cheque.—*Mathews v. Brown*, 63 L.J. Q.B. 494.

**Bankruptcy :—**

- (vi.) **Q. B. D.**—*Act of.—Date—Failure to Comply with Notice—Amendment—Bankruptcy Act, 1883, s. 4 (1) (f).*—A bankruptcy petition stated that the debtor had failed to comply with a bankruptcy notice served on a day named. *Held*, that this did not sufficiently state the date of the act of bankruptcy; and that it ought to have been stated that the debtor had failed before a day, eight days later than the day on which the notice was stated to have been served, to comply with the notice. *Held*, that the defect was not a ground for setting aside the receiving order, but ought to have been amended at the hearing, and could be amended at the hearing of an appeal from the receiving order.—*E. p. Dunhill : in re Dunhill*, L.R. [1894] 2 Q.B. 234.
- (vii.) **Ch. D.**—*Annulment—Private Bargain by Creditor.*—L. assigned his proof in the bankruptcy of M. to trustees for £2,000, having made a private bargain with M. that, after the bankruptcy was annulled, M. should pay him £6,000. *Held*, that the £6,000 could not be recovered, and L.'s claim for that sum in the administration of M.'s estate was disallowed.—*McDermott v. Boyd ; e. p. Levita*, 42 W.R. 474.

- (i.) **Q. B. D.**—*Appeal—Appellant who has not appeared in the Court below—Bankruptcy Acts, 1883, s. 104 (2); 1890, s. 8 (6).*—A creditor who has tendered a proof which is unrejected is a "person aggrieved," and entitled to be heard on appeal against an order of the Court, although he did not appear in the Court when the order was made, nor tender a proof till after the making of the order.—*E. p. Stephenson; in re Langtry, 70 L.T. 786; 42 W.R. 496.*
- (ii.) **Q. B. D.**—*Appointment of Trustee—Two Estates with Conflicting Interests.*—As a general rule, it is not a good objection against the appointment of the same person as trustee of two estates that conflicting interests will arise between them, nor yet that such person is a creditor for a larger amount against one estate than against the other.—*E. p. Board of Trade; in re Lamb, 70 L.T. 694; 42 W.R. 544.*
- (iii.) **Q. B. D.**—*Costs of Solicitor—Criminal Defence—Verbal Agreement.*—The debtors paid a sum of money to their solicitor, and verbally agreed that it was to be employed in their defence against a criminal charge. A receiving order was made before they were committed for trial. *Held*, that the solicitors must repay to the trustee the sum received, less their costs for services rendered up to the date of the petition.—*E. p. Cooper; in re Beyts and Craig, 70 L.T. 561; 42 W.R. 432.*
- (iv.) **C. A.**—*Examination of Witness—Transcript—File.*—The examination of a witness under sect. 27 of the Bankruptcy Act, 1883, is a proceeding of the Court, and the transcript of the shorthand writer's notes must be placed upon the file of the proceedings.—*E. p. Beall; in re Beall, L.R. [1894] 2 Q.B. 185; 63 L.J. Q.B. 425; 70 L.T. 643.*
- (v.) **Q. B. D.**—*Lease—Covenant not to Assign—Assignment by Trustee—Liability for Rent.*—A lease contained a covenant against assignment. The lessee became bankrupt, and the trustee assigned the lease. The lessor claimed as against the trustee the rent due after the assignment. *Held*, that the trustee's liability was based on privity of estate, and ceased on the assignment.—*In re Johnson, e p. Blackett, 70 L.T. 381.*
- (vi.) **Q. B. D.**—*Officer of Friendly Society—Money in Hand—Preferential Claim.*—Where the secretary of a friendly society has been wrongfully allowed to keep in his hands moneys belonging to the society, instead of handing them over at once to the treasurer, the preferential claim of the society in the bankruptcy of the secretary is not lost.—*E. p. Trustees of Star of the West Lodge of Oddfellows, in re Welch, 70 L.T. 691.*
- (vii.) **Ch. D.**—*Partnership—Joint Liability—No Joint Estate—Right of Proof—Bankruptcy Acts, 1883, s. 40 (3).*—When a partnership firm is bankrupt and there is no joint estate, joint creditors may prove against the separate estates in competition with separate creditors.—*Cooper v. Adams, 42 W.R. 551.*
- (viii.) **Q. B. D.**—*Partnership—Right of Trustee of Bankrupt Partner against Execution Creditors of Firm—Bankruptcy Acts, 1883, ss. 45, 46 (3); 1890, s. 11 (1) (2).*—Where execution is levied by seizure and sale against the goods of a firm for a partnership debt, and one of the partners afterwards becomes bankrupt, the trustee of the bankrupt partner has no claim to the proceeds of sale.—*Dibb v. Brooke, L.R. [1894] 2 Q.B. 338; 42 W.R. 495.*
- (ix.) **Q. B. D.**—*Proof—Oral Evidence.*—Upon the hearing of a petition oral evidence may be given to shew that the debt set forth in the petition is still owing at the date of the hearing.—*E. p. Smith; in re Stables, 42 W.R. 448.*

- (i.) **C. A.**—*Public Examination—Order to File Accounts of Business.*—A bankrupt, upon his public examination, denied that he had carried on a certain business as his own. The registrar considered that the business was his, and ordered him to file accounts. *Held*, that the registrar had jurisdiction to determine the question of title for the purpose of making such order.—*E. p. Cromire; in re Cromire*, L.R. [1894] 2 Q.B. 246; 70 L.T. 610; 42 W.R. 417.
- (ii.) **C. A.**—*Receiving Order—Refusal—Second Application—Res Judicata.*—The question of the validity of the petitioning creditor's debt as a good debt in bankruptcy is not made *res judicata* by the refusal of the registrar of a county court to grant a receiving order, on the ground that he was not satisfied that there was a good debt; his jurisdiction being confined to a discretion to grant or refuse a receiving order, and not extending to the decision of the question of whether there was a good debt.—*E. p. Vitoria; in re Vitoria* (No. 2), 42 W.R. 529.
- (iii.) **Q. B. D.**—*Sale by Mortgagee of Bankrupt's Reversion—Rights of Trustee.*—The bankrupt, during bankruptcy, mortgaged his reversion to property. The mortgagees put up the reversion for sale, reserving the rights of the trustee. The trustee obtained an injunction against the sale from the county court. *Held*, that there was no jurisdiction to restrain the sale, as there was no slander of the trustee's title, nor any interference with the administration of the estate. *Semble*, that the result would have been the same even if the trustee's rights had not been reserved.—*E. p. General Public Works and Assets Co.; in re Evelyn*, L.R. [1894] 2 Q.B. 302; 70 L.T. 692; 42 W.R. 512.
- (iv.) **Q. B. D.**—*Subpoena—Refusal to Obey—Insufficient Tender for Expenses—Bankruptcy Act, 1883, s. 27.*—A person subpoenaed to attend in Court, and refusing to obey, cannot be committed for contempt until a reasonable sum has been tendered to cover the cost of coming to the Court and expenses.—*E. p. Hastie; in re Butson*, 70 L.T. 382.
- (v.) **C. A.**—*Secured Creditor—Promissory Note—Guarantee—Bankruptcy Act, 1883, s. 168.*—The debtors lent a sum of money, receiving from the borrower a promissory note, together with a guarantee, the guarantors undertaking to pay to the debtors "or the holders of the promissory note for the time being" the amount thereof if not paid at maturity. The debtors indorsed the note to their bankers, the appellants, who gave them credit for the full amount thereof. The debtors became bankrupt, and the note was dishonoured at maturity. The appellants sought to prove as unsecured creditors for the full amount due to them by the debtors. *Held*, that all the beneficial interest in the guarantee had passed to the appellants, and that they were not "persons holding a mortgage, charge or lien on the property of the debtors or any part thereof," and that they were therefore not secured creditors, and were not liable to deduct the value of the guarantee from their proof.—*E. p. Cochs, Biddulph and Co.; in re Hallett*, L.R. [1894] 2 Q.B. 256.
- (vi.) **C. A.**—*Undischarged Bankrupt—After-acquired Property—Trading—Second Bankruptcy—Bankruptcy Act, 1883, ss. 44, 54.*—An undischarged bankrupt, without the knowledge of the trustee or creditors, carried on business, and acquired property and incurred liabilities. He assigned all his property for the benefit of his creditors, and was again adjudicated bankrupt. *Held*, that the trustee in the first bankruptcy was entitled to all property acquired by the bankrupt, without any obligation to satisfy any of the liabilities incurred by the bankrupt since the first bankruptcy.—*R. p. Beardmore; in re Clark*, 70 L.T. 751.

**Bill of Exchange:—**

- (i.) **Q. B. D.**—*Company—Directors—Liability—Addition—Companies Act, 1862, ss. 41, 42.*—The defendants, two directors and the secretary of a company called the B. Syndicate, accepted a bill of exchange on behalf of the company, giving its name as the O. and B. Syndicate. *Held*, that the name of the company was not "mentioned," and that the defendants were personally liable on the bill.—*Nassau Steam Press v. Tyler*, 70 L.T. 376.

**Bill of Sale:—**

- (ii.) **C. A.**—*Sale of Goods—Receipt—Registration—Husband and Wife.*—A wife having separate estate agreed to purchase from her husband some furniture and other chattels. A receipt for the purchase money was signed by the husband, in which he acknowledged that the chattels were "now absolutely her property." The chattels remained in the house in which the husband and wife lived, and some of them were taken possession of by a judgment creditor of the husband. *Held*, that the goods did not pass by virtue of the receipt, but by the prior bargain, and that consequently the receipt did not require registration as a bill of sale, and that the wife was entitled to the goods. *Held*, also, that the wife had sufficient possession of the goods to take the case out of the Act.—*Ramsay v. Margrett*, L.R. [1894] 2 Q.B. 18.

**Building Society:—**

- (iii.) **Ch. D.**—*Liabilities of Members—Costs.*—In considering whether the members, advanced and unadvanced, of a building society, registered under the Act of 1836, can be called on to contribute towards the discharge of its ordinary debts beyond the amounts of subscriptions or instalments and fines unpaid on their mortgages and shares, the doctrine of principal and agent applies as between members and directors. Therefore when the debts were properly incurred and the assets are insufficient, members, advanced and unadvanced, are liable, and must be placed on the list of contributories. A rule, giving power to bind the members personally for borrowed money would be *ultra vires* so far as it purported to go beyond binding them for the necessary purposes of the society. Therefore members would not be personally liable in respect of loans from depositors. But such members cannot, in answer to a claim to contribute to ordinary debts, set up as an answer that there were sufficient assets to pay the ordinary debts, and that the assets became insufficient only through the repayment of borrowed moneys. In winding up such a society, the costs of realisation ought to come out of the assets, and the costs of winding-up ought to be paid by the members, advanced and unadvanced.—*In re West London and General Permanent Benefit Building Society*, L.R. [1894] 2 Ch. 852; 63 L.J. Ch. 506; 42 W.R. 555.

**Carrier:—**

- (iv.) **H. L.**—*Passenger—Conditions on Ticket.*—Conditions printed on a passenger's ticket are not binding on him unless he has had notice of them. Whether he has had notice or has had his attention drawn to the conditions is a question for the jury.—*Richardson, Spence, & Co. v. Rowntree*, L.R. [1894] A.C. 217; 63 L.J. Q.B. 283.

**Charity:—**

- (v.) **Ch. D.**—*Compulsory Sale of Land—Voluntary Subscriptions—Endowment—Charity Commissioners.*—Land had been bought by a charity out of funds derived from voluntary contributions. The Act incorporating

the charity empowered it to purchase land but not to sell it. The special Act of a railway company conferred on the charity a power of sale, and the land was taken by the company, the purchase-money being fixed by the Act at £40,000. The Charity Commissioners intervened, and £5,000, part of the purchase-money, was paid into Court. *Held*, that if a fund once consisted of voluntary contributions, it retained that character notwithstanding any changes of investment, and being available for the general purposes of the charity was taken out of the Charitable Trusts Act, 1853, by the exception contained in sect. 62 of the Act, and that the consent of the Charity Commissioners was not required, and that the charity was entitled to have the £5,000 paid out to them as being absolutely entitled thereto.—*In re Clergy Orphan Corporation*, 70 L.T. 649.

- (i.) **P. C.**—*Welsh Intermediate Education Act, 1889—Endowed Schools Act, 1869, s. 39—Scheme of Charity Commissioners—Appeal Against—Modern Endowment—Religious Education.*—In an appeal against a scheme under the first named Act, the policy of the scheme cannot be considered. Where there is no direction in the original instrument of foundation as to religious education, nor any regulations prescribed by or under the authority of the founder in his lifetime or within fifty years of his death, the scheme need not provide for religious instruction according to the Established Church. Such regulations cannot be presumed from any practices which may have obtained for many years. Sect. 13 of the Act of 1869 does not apply to rights of patronage which are not, at the date of the Act, exercised by a member of the governing body, or possessed in consequence of his gift or donation. A modern endowment is one which has been given since 1869. Such endowment applied in fitting up a crypt, being part of the old endowment, as a chapel, is so mixed therewith that it must be deemed to be part thereof.—*In re Swansea Free Grammar School*, L.R. [1894] A.C. 252; 70 L.T. 738.

### Cheque :—

- (ii.) **Q. B. D.**—*Signature by Procuration—Limited Authority—Bills of Exchange Act, 1882, s. 25.*—The defendants' manager who had authority to draw cheques on their banking account, but not to overdraw or to borrow, obtained money from the plaintiff for a cheque signed by him by procuration, alleging that he needed cash to pay wages. He paid the money into the defendants' banking account, which was overdrawn on account of his defalcations, and subsequently drew it out and paid it away in wages. *Held*, that the plaintiff was precluded from bringing an action on the cheque, but was entitled to recover the amount as money had and received.—*Rid v. Rigby & Co.*, 63 L.J. Q.B. 451.

### Churchwardens :—

- (iii.) **Q. B. D.**—*Church Rate—Full Annual Value*—Where churchwardens were "directed and required" by a special Act to make and levy a rate "at any meeting holden in vestry" for certain church purposes, such rate to be assessed on the "full annual value" of houses: *Held*, that there was a statutory duty to make the rate, and that they were not required to take the opinion of the vestry thereon, but that the assessment must be on the net annual value, and that the word "full" was not equivalent to "gross."—*Rose v. Watson*, L.R. [1894] 2 Q.B. 90; 63 L.J. M.C. 108; 42 W.R. 523.

### Colonial Law :—

- (iv.) **P. C.**—*Canada—Powers of Local Legislature.*—*Held*, that the provisions of sect. 9 of the Ontario "Act respecting assignments

and preferences by insolvent persons" (revised statutes of Ontario, c. 124) which relate to assignments purely voluntary, and postpone thereto judgments and executions not completely executed by payment, are merely ancillary to bankruptcy law, and as such are within the competency of the provincial legislature so long as they are not in conflict with any existing bankruptcy legislation of the Dominion Parliament.—*Attorney-General of Ontario v. Attorney-General for the Dominion of Canada*, L.R. [1894] A.C. 189; 70 L.T. 538.

- (i.) **P. C.**—*Ceylon—Special Leave to Appeal.*—Special leave given 'to appeal against a decree of the Supreme Court which reversed a decree of the district court, and dismissed a suit for divorce, the Supreme Court having refused leave to appeal, regarding the suit as one for less than the appealable amount.—*Le Meunier v. Le Meunier*, L.R. [1894] A.C. 283.
- (ii.) **P. C.**—*New South Wales—Registered Mortgage—Notice.*—Where the respondent had purchased at public auction eight lots of an estate and subsequently to the contract the vendor mortgaged the whole of the estate by registered deeds to the appellant, who knew at the time of the advance that certain unspecified parts of the estate had been sold: *Held*, that the appellant gained no priority from registration, but took subject to the respondent's purchase.—*Sydney and Suburban Mutual Building and Land Investment Association v. Lyons*, L.R. [1894] A.C. 260.
- (iii.) **P. C.**—*New South Wales—Application to bring Land under 26 Vict., No. 9—Caveat—Lapse—Waiver.*—An applicant to bring land under the above-mentioned Act filed his case more than three months after a caveat had been lodged, and thereafter obtained an order that the caveator should file his case, which he did. *Held*, that the applicant had waived his right to have the caveat set aside as lapsed.—*Wilson v. McIntosh*, L.R. [1894] A.C. 129; 70 L.T. 536.
- (iv.) **P. C.**—*Waste Lands—Right to Select—Contract.*—By contract between the appellant company and the local government the former was entitled, in part consideration of constructing a railway, to select, and call for grants of, land within a prescribed area. *Held*, that the appellant company was entitled to select from all lands within the area which at the date of the contract the Government was able to convey in fee simple, including lands which had been proclaimed as town sites, but which had not by such proclamation been devoted to public uses or otherwise withdrawn from the Government's power of alienation.—*West Australian Land Co. v. Forrest*, L.R. [1894] A.C. 176.

### Company:—

- (v.) **Ch. D.**—*Debentures.*—Where debentures contain covenants to pay the principal at a future date and also interest, and there are no provisions as to the principal becoming due on default or on a winding-up, the fact that there is default in payment of interest and that a winding-up order is made, entitles the holders to a judgment for their protection before the date at which the principal is due, but does not entitle them to immediate payment of the principal money.—*Wallace v. Universal Automatic Weighing Machine Co.*, 70 L.T. 497; 42 W.R. 428.
- (vi.) **Ch. D.**—*Debenture—Right to Foreclosure*—A debenture of a limited company, in the form of a floating security charging all the property of the company, including its uncalled capital, entitles the registered holder, in the event of the debenture becoming immediately payable in consequence of a winding-up, to the ordinary remedy of foreclosure against the uncalled capital as well as the other property.—*Sadler v. Worley*, L.R. [1894] 2 Ch. 170; 70 L.T. 494; 42 W.R. 476.



- (i.) **Ch. D.**—*Debenture-holder's Action—Preservation of Property—Power to Receiver to Borrow.*—In a debenture-holder's action the Court will, in a case of emergency, and in order to preserve the company's property, empower the receiver to borrow money as a first charge on the undertaking in priority to the debentures.—*Greenwood v. Algestras Railway Co.*, L.R. [1894] 2 Ch. 205.
- (ii.) **C. A.**—*Director—Qualification—Estoppel.*—Decision of Ch. D. (see Vol. 19, p. 78, ii.) affirmed.—*E. p. Cammell, in re Printing, &c., Co. of the Agency Havas*, 70 L.T. 705.
- (iii.) **C. A.**—*Director—Qualification Shares—Implied Contract to Take.*—Decision of Ch. D. (see Vol. 19, p. 78, i.) affirmed.—*In re Hercynia Copper Co.*, 70 L.T. 709.
- (iv.) **C. A. & Ch. D.**—*Dividends—Depreciation of Capital.*—A company was formed to raise and invest money, and to apply the dividends and income in accordance with the articles. The articles provided for changes of investment, and gave power to form a reserve fund. The receipts from the dividends on the investments exceeded the expenses, but the market value of the securities held by the company shewed a depreciation of the capital. *Held*, that the surplus of income over expenditure might properly be distributed in dividends in spite of the depreciation of the capital.—*Verner v. General and Commercial Investment Trust.*—L.R. [1894] 2 Ch. 239; 63 L.J. Ch. 456; 70 L.T. 516.
- (v.) **Ch. D.**—*Reduction of Capital.*—The Court refused to sanction a proposed reduction of capital where it appeared that the company had ceased to carry on business for five years, and that the real object was to enable the whole available assets to be distributed amongst the shareholders.—*In re Wallasey Brick and Land Co.*, 63 L.J. Ch. 415.
- (vi.) **H. L.**—*Reduction of Capital—Discontinuance of Part of Business—Cancellation of Part of a Class of Shares—Companies Acts, 1867, s. 9; 1877, ss. 3, 4.*—The Court can sanction a scheme for the reduction of capital which involves the cancellation of a certain number of shares in consideration of the transfer to the holders of part of the company's property. The reduction need not affect all the holders of such class of shares. The words "any capital which may be excess of the wants of the company" only mean that the power shall extend to such capital. The power of the Court extends to every possible mode of reduction, and capital may be legitimately reduced by buying out some of the shareholders. A company carried on part of its business in the United States. *Held*, that a scheme should be approved for the reduction of capital by cancelling the shares held in America, in consideration of the transfer to the holders of the American property of the company, there being only one dissentient shareholder.—*British and American Trustee and Finance Corporation v. Couper*, 62 L.J. Ch. 425.
- (vii.) **Q. B. D.**—*Winding-up—Industrial Society.*—The enactments from time to time in force for the winding-up of companies in the Chancery Division apply to the case of the winding-up of a registered Industrial Society, which was pending in the county court at the time of the passing of the Industrial and Provident Societies Act, 1893, and which has not been transferred to the High Court under the provisions of sect. 59 of that Act.—*In re The Ferndale Industrial Co-operative Society*, L.R. [1894] 1 Q.B. 828; 70 L.T. 448; 42 W.R. 430.
- (viii.) **Ch. D.**—*Winding-up—Jurisdiction—Stannaries—Transfer—Companies Acts, 1862, ss. 81, 141; 1890, s. 1, sub-s. 4, s. 3, sub-s. 1, s. 32, sub-s. 1, 2.*—The High Court has power to transfer or retain proceedings in voluntary as well as in compulsory liquidations. Where a company is formed for working mines within the stannaries and elsewhere, the

winding-up jurisdiction is in the Stannaries Court, until it is proved that the company has been working mines elsewhere. This applies to both voluntary and compulsory liquidations. The fact that an application in the voluntary winding-up of a company has been made in the Stannaries Court is a ground for transferring to that Court another application in the same winding-up.—*In re New Terras Tin Mining Co.*, L.R. [1894] 2 Ch. 344; 63 L.J. Ch. 397; 70 L.T. 625; 42 W.R. 504.

- (i.) **Ch. D.**—*Winding-up—Report of Official Receiver—Fraud—Companies Act, 1890, s. 8.*—In order to obtain an order for public examination under the section above-mentioned, the official receiver should, in his further report, state matters of information and belief, and should pledge himself that such matters in his opinion constitute a *prima facie* case of fraud by some person, not specifying which person, in the promotion or formation of the company, or in relation to the company since the formation thereof. Whether or not the expression of such opinion is a condition precedent to the making of such an order, it is convenient in practice that it should be so expressed.—*In re General Phosphate Corporation*; *in re Northern Transvaal Gold Mining Co.*; *in re Delhi Steamship Co.*, 63 L.J. Ch. 513; 70 L.T. 626.

- (ii.) **Ch. D.**—*Winding-up Petition—Abuse of Process—Jurisdiction to Restrain.*—Where a winding-up petition is presented for the purpose of putting pressure on a company, the Court has jurisdiction to prevent such an abuse of process, and will do so, without requiring an action to be commenced, by restraining the advertisement of the petition, and staying all proceedings upon it.—*In re A Company*, L.R. [1894] 2 Ch. 349.

See Bill of Exchange, p. 117, 1.

### Contract:—

- (iii.) **P. C.**—*Condition Precedent—Repudiation.*—Bankers sold to A., exchange contracts, i.e., undertook to pay in exchange for silver sterling money or its equivalent within certain limits of time at a specified rate, but stipulated that the goods in payment for which the sterling money was required should be financed by them. *Held*, in an action on the exchange contracts, that financing the goods was a condition precedent. But that both parties were under a mutual obligation to settle reasonable terms of financing, and that as the bankers repudiated such obligation A. was entitled to judgment. The evidence as to the parties' compliance with the condition precedent being in London, their Lordships directed it to be taken on commission instead of remitting the case to the Court below in Shanghai.—*Bank of China, Japan, and the Straits v. American Trading Co.*, L.R. [1894] A.C. 266.
- (iv.) **H. L.**—*Conflict of Laws—Locus Solutionis.*—A contract between English and Scotch firms, signed in London, but to be performed in Scotland, provided for the reference of any disputes to "two members of the London Corn Exchange, or their umpire, in the usual way." The Scotch firm sued on the contract in Scotland, and the Court decided that the arbitration clause was bad by the law of Scotland, the *locus solutionis*. *Held*, that the intention of the parties was that the contract, so far at least as concerned the arbitration clause, should be governed by English law, and that the clause was good.—*Hamlyn and Co. v. Talisker Distillery Co.*, L.R. [1894] A.C. 202.

### Conversion:—

- (v.) **Q. B. D.**—*Crossed Cheque—Banker.*—The payee of a crossed cheque indorsed it specially to the plaintiffs and posted it to them. A stranger got possession of the cheque, obliterated the indorsement to

the plaintiffs, substituted one to himself, and presented it at the defendants' bank to collect for him. The defendants collected the cheque and handed him the proceeds. *Held*, that they were liable for the conversion of the cheque.—*Kleinwort, Sons & Co. v. Comptoir National D'Escompte de Paris*, L.R. [1894] 2 Q.B. 157.

### Copyright:—

- (i.) **Ch. D.**—*Infringement—Picture—Copy of Reproduction.*—A copy of a picture is an infringement of the copyright in that picture even if the copy is not made directly from the picture, but is taken from a reproduction which is not itself an infringement.—*Hanfstaengl v. Empire Palace*; *Hanfstaengl v. Newnes*, 63 L.J. Ch. 452.
- (ii.) **C. A.**—*Picture*—25 & 26 Vict., c. 68, ss. 6, 10—49 & 50 Vict., c. 83.—The representation of a picture by means of tableaux vivants is not an infringement of the copyright in such picture.—*Hanfstaengl v. Empire Palace*, L.R. [1894] 2 Ch. 1; 63 L.J. Ch. 417; 70 L.T. 459; 42 W.R. 454.

### County Court:—

- (iii.) **Q. B. D.**—*Costs—Action Remitted—County Courts Act, 1888, s. 65.*—An action was brought in the High Court for £104. The defendant paid £90, and the action was remitted to a county court. The defendant paid the balance of the claim before the return day. *Held*, that the plaintiff was entitled to costs under Scale C.—*Kerble v. Bennett*, L.R. [1894] 2 Q.B. 329; 42 W.R. 539.
- (iv.) **Q. B. D.**—*Practice—Judge's Note—County Courts Act, 1888, ss. 120, 121.*—A county court judge is only bound to take a note when a question of law is raised, and he is asked to take a note of that question; and it is then his duty to take a note of that question of law, and of the evidence relating thereto, and of his decision thereon, and of his decision of the action or matter. If there be more questions of law than one, the request to take a note must be made in respect of each.—*Reg. v. Kerr*, 70 L.T. 595.
- (v.) **Q. B. D.**—*Remittal to—Unliquidated Damages—Indorsement on Writ.*—There is no power under sect. 65 of the County Courts Act, 1888, to remit an action for unliquidated damages to the county court, even where the writ is indorsed with a claim for a liquidated sum.—*Bassett v. Tong*, L.R. [1894] 2 Q.B. 332.

### Criminal Law:—

- (vi.) **C. C. R.**—*Indictment—False Pretences.*—An indictment which does not aver to whom a false pretence was made, nor from whom money was attempted to be obtained is bad.—*Reg. v. Sowerby*, L.R. [1894] 2 Q.B. 173; 68 L.J. M.C. 186.
- (vii.) **Q. B. D.**—*Misdemeanour—New Trial—Obstruction of Highway—Evidence.*—Where the defendant had been found guilty on an indictment in the Queen's Bench Division of obstructing a highway, a new trial may be granted on the grounds of misdirection, wrongful reception of evidence, and verdict against evidence. The map attached to an old enclosure award shewing an ancient highway as existing at the time of the award, is not admissible at the trial of such an indictment as evidence of reputation to prove the boundaries of the highway, where the defendant's property lying adjacent to the highway was not subject to the jurisdiction of the enclosure commissioners.—*Reg. v. Berger*, L.R. [1894] 1 Q.B. 823; 42 W.R. 541.

- (i.) **C. C. R.**—*Obtaining Credit—Undischarged Bankrupt.*—When an undischarged bankrupt is indicted for obtaining credit contrary to sect. 73 of the Bankruptcy Act, 1883, it is no defence to show that the credit was obtained without fraudulent intent, and evidence for that purpose is inadmissible.—*Reg. v. Dyson*, L.R. [1894] 2 Q.B. 176; 63 L.J. M.C. 124; 42 W.R. 526.
- (ii.) **C. C. R.**—*Previous Conviction—Certificate—Coinage Act, 1861, ss. 9, 12.*—A certificate of a previous conviction for misdemeanour under the Coinage Act, need not set out that there was judgment and sentence, as well as verdict. A prisoner so convicted, and released on recognizance to come up for judgment when called, may on a second offence be indicted for felony, and properly convicted, upon proof of a certificate of the former conviction and release.—*Reg. v. Blaby*, L.R. [1894] 2 Q.B. 170; 63 L.J. M.C. 133; 42 W.R. 511.

### **Ecclesiastical Law :—**

- (iii.) **Consistory Court of St. Alban's.**—*Faculty—Chancel Screen—Gates.*—Gates in a chancel screen have been declared to be objectionable, as affecting a separation between the nave and the chancel which ought not to be sanctioned, and the Court refused a faculty for a screen with gates; though it was stated that they would be useful as a protection to the ornaments in the chancel when the church was thrown open for private prayer.—*Rector, &c., of Romford v. All Persons Having Interest, &c.*, L.R. [1894] P. 220

**Estoppel.**—*See Highway*, p. 124, iv.

### **Executors :—**

- (iv.) **Ch. D.**—*Land—Power of Sale—Charge of Legacy.*—A charge of a legacy on lands devised beneficially in fee or in tail does not give the executor a power of sale.—*Bennett v. Rebbeck*, 42 W.R. 473.

### **Fishery :—**

- (v.) **Q. B. D.**—*Freshwater—Bailiff—Authority to Prosecute.*—Under sect. 13 of the Fisheries Act, 1891, a water bailiff may prosecute for an offence against the Fisheries Acts without the authority of the board of conservators of the district.—*Pollock v. Moses*, 63 L.J. M.C. 116; 70 L.T. 378.

### **Friendly Society :—**

- (vi.) **Q. B. D.**—*Arbitration—Disputes—Friendly Societies Act, 1875, s. 22.*—*Held*, that a claim raising the question whether the second wife of an enrolled member of a friendly society was entitled to enrolment, and a claim for an injunction arising upon a suggestion that the society was about to dispose of its funds otherwise than for the benefit of its members, were both disputes within a rule of the society providing for arbitration in disputes between the society and its members.—*Stone v. Liverpool Marine Society*, 63 L.J. Q.B. 471.

### **Habeas Corpus :—**

- (vii.) **Q. B. D.**—*Costs—Judicature Act, 1890, ss. 4, 5.*—The Court now has power, when granting an application for a writ of *habeas corpus*, to order the defendant to pay the costs of the application.—*Reg. v. Jones*, L.R. [1894] 2 Q.B. 382.

**Hackney Carriage:—**

- (i.) **Q. B. D.**—*Plying for Hire*—*Towns Police Clauses Acts, 1847, s. 45; 1889, s. 4—Public Health Act, 1875, s. 171.*—An omnibus was run without a licence in the following way:—Notices were exhibited that the omnibus was placed at the service of the public free of charge, and that voluntary contributions to support the omnibus would be welcomed. There was a conductor to give change. Some persons using the omnibus gave no money, but many did so. *Held*, that this was "plying for hire" within the meaning of the Acts.—*Cocks v. Mayner*, 70 L.T. 408.

**Harbour:—**

- (ii.) **Q. B. D.**—*Obstruction to Navigation—Discharge of Solid Matter in Suspension*—54 *Geo. 3, c. 159, s. 11.*—The appellants discharged water containing solid matter in suspension through a drain into a tidal brook, which flowed into a navigable river. The solid matter was deposited in the river, but it was not alleged or shewn that it tended to the injury or obstruction of the navigation of the river. *Held*, that they were rightly convicted under the section above-mentioned.—*The United Alkali Co. v. Simpson*, L.R. [1894] 2 Q.B. 116; 63 L.J. M.C. 141; 42 W.R. 509.

**Highway:—**

- (iii.) **Q. B. D.**—*Conviction—Defect—Encroachment—Certiorari—Title—Highway Act, 1854, s. 51.*—The defendant was convicted under the section mentioned, but the conviction did not state that he had "encroached" on the highway. *Held*, that if necessary the conviction might be amended, but that the omission of the word "encroach" did not make it bad, and that certiorari did not lie for such a defect. The defendant contended that he was the owner of the land which he was alleged to have taken from the highway, and that the justices could not adjudicate, there being a question of title to land. *Held*, that they had jurisdiction to decide whether the land was part of the highway or not.—*Reg. v. Bradley*, 70 L.T. 379.
- (iv.) **Q. B. D.**—*Rate—Exemption—Repair—Ratione Tenure—Alteration—Estoppel—Res Judicata*—The appellants were liable to repair a highway *ratione tenure* and the Court had decided that they were therefore exempt from highway rates. It was not however brought to the notice of the Court that the turnpike trustees, under whose control the highway had been, had materially altered its nature and course. *Held*, that the liability to repair *ratione tenure* and the exemption from rates had both ceased on the alteration of the road; and that the previous decision did not make the matter *res judicata*, the material fact of the alteration not having been before the Court.—*Heath v. Overseers of Weaverham*, L.R. [1894] 2 Q.B. 108; 70 L.T. 729; 42 W.R. 478.

**Husband and Wife:—**

- (v.) **P. D.**—*Divorce—Adultery—Condonation after Decree Nisi—Collusion—Material Facts.*—Where adultery has been condoned, and fresh adultery has afterwards taken place, such condonation does not disentitle the petitioner to a divorce. Where the condonation has taken place since the *decree nisi* it is a material fact which ought to be brought before the Court, and the suppression of it is a good ground for the intervention of the Queen's Proctor, and for the rescission of the *decree nisi*.—*Rogers v. Rogers*, L.R. [1894] P. 161; 63 L.J. P. 97; 70 L.T. 699.
- (vi.) **C. A.**—*Divorce—Permanent Maintenance.*—(See Vol. 19, p. 85, v.) *Held*, that the husband must secure, as permanent maintenance, a sum amounting to one-third part of the limited profits only.—*Hanbury v. Hanbury*, 63 L.J. P. 105; 70 L.T. 569; 42 W.R. 434.

- (i.) **P. D.**—*Divorce—Variation of Settlements.*—Where a marriage settlement gives the wife power after the death of the husband to make provision for a second husband and family, the Court will not, after a divorce obtained owing to the misconduct of the husband, vary the settlement so as to allow the wife to exercise the power before his death.—*Pollard v. Pollard*, L.R. [1894] P. 172; 63 L.J. P. 104.

**Infant:—**

- (ii.) **Q. B. D.**—*Child Living in House Resided in by Prostitutes—Order for Removal to Industrial School—Industrial Schools Acts, 1866, s. 14; 1880, s. 1—Elementary Education Act, 1876, s. 13.*—Any person may bring a child before the justices with the object of having it sent to an industrial school, and it is not necessary to shew that an application has been made to the local authority to bring such child before the justices.—*Walker v. Jackson*, 70 L.T. 690.
- (iii.) **Ch. D.**—*Ante-Nuptial Settlement—Confirmation.*—The disability of coverture does not prevent an adult married woman affirming her ante-nuptial settlement made in infancy without the formality of an acknowledged deed. *Seemle*, as to the mode of affirmation, that there is no distinction between the voidable covenant of a woman afterwards marrying and that of a man.—*In re Hodson's Settlement*, 42 W.R. 531.
- (iv.) **C. A.**—*Contract—not for Benefit of.*—The plaintiff, a boy of about thirteen, who was employed at a colliery, entered into an agreement with a railway company by which, in consideration of being allowed to travel to and fro between his home and the colliery, under a special arrangement between the colliery owner and the company, he agreed that the company should not be liable for any damage to himself or his property while travelling on the railway, although such damage might be caused by the negligence of the company's servants. *Held*, that the contract was not for his benefit, and was not binding on him.—*Flower v. L. & N.W.R.*, L.R. [1894] 2 Q.B. 65; 42 W.R. 519.
- (v.) **Q. B. D.**—*Contract—Insurance Society—Employers' Liability Act, 1880.*—An infant signed an agreement with his employers contracting himself out of the Employers' Liability Act, 1880, and agreeing to become a member of an insurance society which was largely supported by the employers. *Held*, that the contract, being to secure the infant employment, and containing nothing to prejudice his interests, was for his benefit, and was binding on him.—*Clements v. L. & N.W.R.*, 70 L.T. 531.
- (vi.) **Ch. D.**—*Gift to Class attaining Twenty-one—Comeyancy Act, 1881, s. 4.*—A testator, who died in 1888, gave his residuary estate upon trust for the child or children of T. living at the testator's death, and who should attain twenty-one. There was no maintenance clause. At the testator's death there were six children of T., all infants. On the eldest child attaining twenty-one, she claimed one-sixth of the original residue, and of the fund accumulated during her minority, and also the whole income of the original residue, and of the accumulated fund until the next child should come of age, and after that one-half of the income until another child should come of age, and so on until the youngest should come of age. *Held*, that she was entitled to one-sixth of the residue and accumulations, but not to the income of the remaining five-sixths.—*Holford v. Holford*, 70 L.T. 482.
- (vii.) **Ch. D.**—*Maintenance—Contingent Legacy.*—A testator specifically bequeathed a sum of stock upon trust for two infants contingently on their surviving him and attaining twenty-one. The sum of stock was standing in his name at his death. *Held*, that the stock was segregated

from the estate for the benefit of the legatees, and that the intermediate income would belong to them on attaining twenty-one, and that they were entitled to maintenance thereout.—*Clements v. Pearsall*, 70 L.T. 692.

### Joint Contractor :—

- (i.) **Q. B. D.**—*Judgment on Cheque—Bar.*—An unsatisfied judgment against one joint contractor on a cheque given by him alone for the joint debt, is not a bar to an action against the other joint contractor on the original contract.—*Wegg Prosser v. Evans*, L.R. [1894] 2 Q.B. 101; 70 L.T. 664.

### Jointure :—

- (ii.) **Ch. D.**—*Rentcharge—Right to have Arrears Raised by Sale.*—By settlement on the marriage of H. lands were limited to the use that after the death of H. the wife should receive a rentcharge out of the rents with powers of entry and distress. There was no term to secure the rentcharge. The rentcharge, some time after the death of H., fell into arrear, the owner of the land alleging that the rents were insufficient to pay it. The widow took out a summons for a declaration that the rentcharge was charged upon the corpus, and that the arrears might be raised by sale or mortgage. *Held*, that it was not necessary to decide whether it was charged on the corpus, for even if it was only a charge on the rents, there was jurisdiction to order the arrears to be raised by sale or mortgage, but that under existing circumstances a sale ought not to be directed. The summons was ordered to stand over with liberty to apply.—*Hambro v. Hambro*, 70 L.T. 684.

### Landlord and Tenant :—

- (iii.) **C. A.**—*Breach of Covenant to Repair—Notice to Remedy—Costs of Surveyor and Solicitor—Conveyancing Acts, 1891, s. 14; 1892, s. 2, sub-s. 1.*—(See Vol 19, p. 87, iii) *Held*, reversing the decision of the Q. B. D., that the lessor could not recover expenses from an under lessee, with whom he had no privity of contract, and that a lessee who avoids forfeiture by complying with a notice served on him under sect. 14 of the Act of 1891, is not relieved under the provisions of that Act, within the meaning of sect. 2, sub-sect. 1, of the Act of 1892.—*Nind v. Nineteenth Century Building Society*, L.R. [1894] 2 Q.B. 226; 42 W.R. 481.
- (iv.) **Ch. D.**—*Light and Air—Derogation from Grant.*—The plaintiff took a lease of premises for the purpose of his business as a timber merchant, and covenanted to carry on that business thereon. The defendants, successors in title to the lessors, erected on adjoining premises buildings which interfered with the access of air to the drying sheds, and made them less useful. *Held*, that the plaintiff was not, upon the evidence, entitled to an injunction, but was entitled to an inquiry as to damages.—*Aldin v. Latimer, Clark, Muirhead, and Co.*, 42 W.R. 553.

### Lands Clauses Act :—

- (v.) **C. A.**—*Compulsory Purchase—Re-investment—New Building—Costs.*—The costs, charges, and expenses of an investment in the erection of new buildings of a fund paid into Court by a public authority on a compulsory purchase, and of obtaining the order, and the costs, charges, and expenses, including the architect's fees, properly incurred in or about or in relation to the contract for the execution of the works, were ordered to be paid by the public authority.—*In re Arden*, 70 L.T. 506.

**Libel :—**

- (i) **C. A.**—*Interlocutory Injunction—Jurisdiction.*—The plaintiff had been tried for murder in Scotland, and a verdict of "Not proven" was returned. The defendants placed a portrait model of the plaintiff in their exhibition in the "Chamber of Horrors." The plaintiff claimed that the exhibition was libellous. The Queen's Bench Division granted an interim injunction, on the ground that the exhibition was libellous. Upon appeal evidence was adduced which raised a question whether the plaintiff had not acquiesced in the exhibition. *Held*, that considering such evidence an interim injunction ought not to be granted. The Court of Appeal was divided on the question whether the exhibition was so clearly libellous that an injunction ought to have been granted apart from the evidence last mentioned. *Semble*, that in considering whether an interim injunction ought to be granted against the publication of a libel, the Court will make no distinction between a trade libel and one affecting personal character.—*Monson v. Madame Tussaud, Limited*, L.R. [1894] 1 Q.B. 671; 63 L.J. Q.B. 451; 70 L.T. 335.
- (ii) **Q. B. D.**—*Newspaper—Apology and Payment into Court—Unconditional*—8 & 9 Vict., c. 75, s. 2.—*R.S.C.*, 1883, O. xxii., r. 22.—Payment into Court under the statute above-mentioned in an action for a newspaper libel, is unconditional. The rule above-mentioned does not deprive the plaintiff of his right to the sum paid in, though the jury may award him a smaller sum as damages.—*Dunn v. Devon and Exeter Constitutional Newspaper*, 63 L.J. Q.B. 342, 70 L.T. 593.
- (iii) **P. C.**—*Newspaper—Imputation on Manager*—An imputation upon a newspaper is not necessarily an imputation upon everybody connected therewith. A newspaper of which A. was manager and part proprietor published an erroneous report. Another newspaper of which X. was proprietor, in commenting on the mistake, spoke of A.'s newspaper as the M. Street Evening Ananias. *Held*, that this was not necessarily to be understood as an imputation of wilful falsehood upon the manager, and that the verdict of a jury in favour of X. should not be set aside as unreasonable.—*Australian Newspaper Co. v. Bennett*, L.R. [1894] A.C. 284; 70 L.T. 597.
- (iv) **C. A.**—*Privilege.*—In order that the occasion on which a defamatory statement is made should be privileged, it is necessary that the person to whom it is made, as well as the person making it, should have an interest or duty in respect of the subject of the statement. It is not enough that the maker of the statement honestly and reasonably believes that the person to whom it is made has such an interest or duty.—*Hebditch v. Melluaine*, L.R. [1894] 2 Q.B. 54; 42 W.R. 422.
- (v) **C. A.**—*Trade Rival Traders—Advertisement.*—The defendant retailed a patent food of the plaintiff's. He affixed to the plaintiff's goods a label stating that a patent food, used for similar purposes, of which he was the proprietor, was more nutritious than any other. *Held*, that if it were proved that the statement on the label was false with respect to the plaintiff's goods, and that it disparaged them and was likely to injure the plaintiff's business, an injunction could be granted to restrain the issue of the label.—*Mellin v. White*, 42 W.R. 549.

**Licensing :—**

- (vi) **Q. B. D.**—*Alehouse—Renewal—Objection—Adjournment—Jurisdiction*—*Licensing Acts*, 1872, s. 42; 1874, s. 26.—No notice of objection to the renewal of an alehouse licence had been served before the general annual licensing meeting. At the meeting the chief constable objected



verbally, but did not state his grounds, and the justices adjourned the hearing to the day of the adjourned general meeting. *Held*, that the chief constable was not bound to state his grounds of objection at the general meeting, and that the justices had jurisdiction to adjourn the hearing.—*Daykin v. Parker*, L.R. [1894] 2 Q.B. 273; 63 L.J. M.C. 112; 42 W.R. 459.

### Limitations:—

- (i.) **Ch. D.**—*Bonds held as Security—Special Agreement.*—A letter by creditor to debtor sending an account, which is not answered, is not an acknowledgment so as to prevent the statute from running. An obligation to pay a deficit which may arise on realisation of a security does not become a "debt" until sale of the security. B. lent M. a sum in 1881 which was invested in bonds which were handed to B. as security. B. received the dividends. In 1890 the bonds were sold, and B. sent M. an account, appropriating part of the proceeds towards the debt. *Held*, that this did not take the case out of the statute. A further advance was made by B. in 1882 on security of the bonds, with an express agreement to pay the deficiency on realisation. The bonds were sold in 1890. *Held*, that B.'s claim to the deficiency was not statute-barred.—*McDermott v. Boyd; e. p. Barker*, 42 W.R. 491.
- (ii.) **C. A.**—*Time at which Statute begins to Run—Ambassador—Immunity of absence beyond Seas—Return.*—Decision of Q. B. D. (see Vol. 19, p. 89, iv.) affirmed.—*Musurus Bey v. Gadban*, L.R. [1894] 2 Q.B. 352; 42 W.R. 545.

### Local Government:—

- (iii.) **Ch. D.**—*Sewers—Private—Voluntary Rate—Public Health Act, 1875, s. 13, sub-s. (1), s. 14.*—A landowner constructed sewers to drain a town, of which he was the principal owner. He demanded and received for many years a voluntary sewer rate from persons who used the sewers whether they were his tenants or not. *Held*, that the sewers were made by him "for his own profit," and did not vest in the local board.—*The Local Board for Minehead v. Luttrell*, L.R. [1894] 2 Ch. 178; 63 L.J. Ch. 497; 70 L.T. 446.

### Lunatic:—

- (iv.) **C. A.**—*Maintenance—Wife—Execution Creditor.*—The master approved a scheme which provided for the payment of £1 a week for the support of the lunatic, who was in an asylum, and £1 a week to his wife. Judgment creditors of the lunatic opposed. *Held*, that the provision for the lunatic's wife must be struck out, and that the order should be without prejudice to any charge or priority the execution creditors might have obtained by lodging their writ of *fi. fa.* with the sheriff.—*In re Winkle, Jun.*, 70 L.T. 710; 42 W.R. 513.

### Market:—

- (v.) **Ch. D.**—*Disturbance—Private Sale-yard.*—The plaintiffs had the sole right of holding a market for pigs, and penalties were imposed on anyone selling pigs "except in some fair or market lawfully authorized, or in his own dwelling-place, shop, or place of business, or on any farm or land in his occupation." The defendants were an association of six persons, who had set up a sale-yard for pigs, to which the public had access during market hours, and where the pigs of anyone were sold. There were common ways, and a common room in the sale-yard, but all the sales of pigs were effected through the members of the association, to whom alone the stalls were let, and a charge was paid by them to the association for each pig sold, whether on the premises or not.

There was evidence that sales took place on portions of the yard not let to the individual defendants. *Held*, that what the defendants were doing as an association and as individuals was not within the exception, and was a disturbance of the plaintiffs' market rights.—*Mayor, &c., of Birmingham v. Foster*, 70 L.T. 371.

### Marriage Settlement:—

- (i.) **H. L.**—*Infant—Repudiation—Effect of.*—Decision of C. A. (see Vol. 17, p. 134, i.) affirmed. —*Edwards v. Carter*, 63 L.J. Ch. 100.

### Married Woman:—

- (ii.) **Ch. D.**—*Separate Estate—Sequestration—Arrears of Rent—Married Women's Property Act, 1882, ss. 1 (2), 19.*—A writ of sequestration was issued, pursuant to an order, against such part of the estate as was free from restraint on anticipation of a married woman, tenant for life of real estate, subject to such a restraint. An interim injunction was granted to restrain her from receiving the rents due on the quarter day following the issue of the writ. *Held*, that the injunction could not be sustained, as the sequestrators were only entitled to seize the property free from restraint. *Held*, also, that the Court would not make a fresh order for sequestration, as there was no evidence that there was any property in existence which it could affect.—*Hood-Barrs v. Cathcart*, 70 L.T. 622; 42 W.R. 531.

### Metropolis Management:—

- (iii.) **Q. B. D.**—*Building—Party Wall—Metropolitan Building Act, 1855, s. 27, r. 4.*—The rule mentioned is not confined to warehouses and buildings *ejusdem generis* with warehouses. The appellants erected a building in eight floors. The basement was to be used for packing goods, the ground floor as a retail shop, and the floors above for dining-rooms and kitchens. *Held*, that the building was to be used partly for the purposes of trade, and that the rule applied.—*Holland v. Wallen*, 70 L.T. 376.
- (iv) **C. A.**—*Building Lane—Metropolis Management Act, 1882, s. 75.*—Decision of Q. B. D. (see Vol. 19, p. 92, i.) affirmed.—*Wendon v. L.C.C.*, L.R. [1894] 1 Q.B. 812; 63 L.J. M.C. 107; 70 L.T. 440.
- (v.) **Q. B. D.**—*Street—Width—Metropolis Management Acts, 1855, s. 250; 1878, s. 6.*—Where a street was at the passing of the Act of 1878 a country road, and not formed or laid out for building, the provisions of sect. 6 of that Act, requiring that the external wall or the boundary of the forecourt shall not be less than the prescribed distance from the centre of the road, are applicable.—*London County Council v. Mitchell*, 63 L.J. M.C. 104.
- (vi.) **C. A.**—*Street—Obstruction—Costermongers—Michael Angelo Taylor's Act, s. 65—Metropolitan Streets Management Act, 1867, s. 6; Amendment Act, 1867, s. 1.*—The power conferred on the persons having the control of the pavements to seize goods and barrows remaining there for longer than is required to load and unload is impliedly suspended as against costermongers so long as they act according to the police regulations.—*Austin v. Vestry of St. Mary, Newington*, 70 L.T. 509; *Keep v. Vestry of St. Mary, Newington*, 63 L.J. Q.B. 369.

### Mortgage:—

- (vii.) **C. A.**—*Priorities—Charge of Annuities—Receivership Deed—Notice.*—Decision of Ch. D. (see Vol. 19, p. 50, v.) affirmed.—*Cradock v. Scottish Provident Institution*, 70 L.T. 718.

- (i.) **Ch. D.—Consolidation.**—The owner of several properties, in the years 1868 to 1866, mortgaged them to different persons, and in 1868 gave a second mortgage on all the properties to H. In 1871 and 1873 all the first mortgages except one were transferred to R. In 1885 H. transferred the second mortgage to P., and in 1890 the remaining first mortgage was transferred to R. *Held*, that R. was entitled to consolidate them all against P.—*Pledge v. Carr*, L.R. [1894] 2 Ch. 328; 70 L.T. 586.
- (ii.) **Ch. D.—Consolidation.**—A. owned Blackacre and Whiteacre. In February, 1864, he mortgaged Blackacre to S., and in July, 1864, he gave a second mortgage on it to X. In 1863, 1865, and 1866 he mortgaged Whiteacre to Z. and others. In 1871 and 1873 the first mortgages were both transferred to R. In 1884, A. mortgaged both properties to M., and in 1885 to P. (in each case subject to the prior incumbrances). In July, 1890, the second mortgage of X. on Blackacre was transferred to P., who in October, 1890, sold Blackacre under the power of sale in the mortgage to M., subject only to the first mortgage to S., then vested in R. *Held*, that R. could not consolidate the first mortgages, so as to prevent M. from redeeming Blackacre alone, as the union of the mortgages had not taken place until the second mortgage on Blackacre had been effected; and that the right of redemption was not affected by M. or P. being already puisne incumbrancers on both properties when they took transfers of X.'s mortgage.—*Minter v. Carr*, L.R. [1894] 2 Ch. 321; 70 L.T. 588.
- (iii.) **P. C.—Sale by Mortgagee to Himself—Sale by Him—Improvements.**—A mortgagee sold the mortgaged property under his power of sale by auction, ostensibly to a third person, but really to himself; he took possession, effected improvements, and resold to A. The mortgagor sued the mortgagee and A. for redemption. *Held* (1), that the mortgagee's abortive sale to himself was not shewn to be fraudulent; (2) that the sale to A. was a valid exercise of the power of sale; (3) that A. was under no obligation to give notice of the sale to the mortgagor, or to see to the application of the purchase-money; (4) that the mortgagee should be allowed the costs of the improvements, so far as they enhanced the value of the property.—*Henderson v. Astwood*, L.R. [1894] A.C. 150.

### Municipal Corporation:—

- (iv.) **Ch. D.—Borough Funds—Misapplication—Subsidy to College—Mayor's Salary—Municipal Corporation Act, 1882, ss. 143, 144.**—A corporation was empowered by special Act to contribute £10,000 towards the purchase of a site for a college, and resolved that that sum should be paid on certain property being conveyed to the college. The purchase remained in abeyance, and the college was carried on in suitable premises, rented for the purpose. *Held*, that the payment out of the borough fund to the college of £400, being a year's interest on the £10,000, could not be justified either under the special Act, or as a payment "for the public benefit of the inhabitants and improvement of the borough." *Held*, that the payment out of the borough fund of £650, which was voted in 1893 as an addition to the Mayor's salary for the purpose of celebrating the marriage of the Duke of York, was not illegal, though it was in fact not paid to the Mayor, but carried to a separate account, and expended by a committee. "But a payment made in the form of an addition to a mayor's salary is not legal unless it is a *bonâ fide* increase of salary.—*Attorney-General v. Corporation of Cardiff*, L.R. [1894] 2 Ch. 337; 70 L.T. 591.

- (1) **Q. B. D.**—*Election of Mayor—Office of Profit—Personal Interest—Interest in Lease—Vote of Chairman—Municipal Corporations Act, 1882, s. 12, sub-s. 2 (a); s. 15, sub-s. 4; s. 22, sub-s. 3; s. 42, sub-s. 1; s. 61, sub-s. 4.*—Where a salary is attached to the office of Mayor, a candidate may not vote for himself, as he has a pecuniary interest. The validity of a vote given by a disqualified person in virtue of a corporate office, may be enquired into on an election petition. The section which provides that a person shall not be disqualified from being a councillor by virtue only of having an interest in a lease in which the council is interested, refers to a lease for a day as well as to a longer lease. The chairman, unless disqualified, is not prevented from voting in the first instance by the fact that he has a casting vote.—*Nell v. Longbottom*, L.R. [1894] 1 Q B. 767; 63 L.J. Q.B. 490; 73 L.T. 499.

**Novation:—**

- (ii.) **C. A.**—*Banking Firm—Death of Partner—Alteration of Account*—After the death of a partner in a banking firm a customer transferred a sum from current to deposit account. On a claim against the deceased partner's estate on the deposit note: *Held*, that there was a novation of the debt, and that the estate of the deceased was discharged.—*Head v. Head; Tester's Case*, L.R. [1894] 2 Ch. 236; 70 L.T. 608; 42 W.R. 419.

**Nuisance:—**

- (iii.) **C. A.**—*Adjoining Owners—Tree Overhanging Boundary—Right to Cut—Notice*—A person may cut away the branches of a tree belonging to his neighbour which overhang his land, and the owner of the tree is not entitled to any notice unless his land is entered upon to effect such cutting. The age of the branches is not material.—*Jemmon v. Webb*, 70 L.T. 712.
- (iv.) **Ch. D.**—*Electric Lighting—Leaseholder and Reversioner—Vibration—Structural Damage—Electric Lighting Acts, 1882 & 1888.*—Action by freeholder and leaseholder of a public-house to restrain the use of a dynamo or other machinery, so as to injure the premises by vibration or otherwise, and so as to cause a nuisance by vibration or noise. *Held*, that statutory power given to do a thing does not justify the doing of it so as to cause a nuisance, unless by express language or necessary implication. The express licence given by the Act of 1882 to break up streets goes to shew that other nuisances are not allowed. *Held*, on the evidence that the defendants had damaged the plaintiffs' premises, so as to make them less comfortable, so as to damage the structure, and to decrease the value. *Held*, that the leaseholder could be compensated by damages, and that he ought to have his costs. *Held*, that the freeholders had a right of action in respect of structural damage, and that there should be an enquiry as to damages, but that their action must be dismissed with costs so far as it sought for an injunction.—*Mear Brewery Co. v. City of London Electric Lighting Co.*, 70 L.T. 762.
- (v.) **Q. B. D.**—*Noise in Street—By Law—Proof*—A by-law of a borough provided that any person who made a noise in the streets of the borough to the annoyance of the inhabitants should be guilty of an offence. *Held*, that it was not necessary, upon a summons under the by-law, to prove that more than one person had, in fact, been annoyed.—*Innes v. Newman*, L.R. [1894] 2 Q B. 292; 70 L.T. 689.
- (vi.) **C. A.**—*Sewage—Rivers Pollution Act, 1876, ss. 3, 10, 20*—The county court judge dismissed a plaint against a local board for polluting a stream, on the ground that it had succeeded to an old system of sewerage, which caused sewage matter to pass into the stream, and

had done nothing to increase the nuisance. *Held*, that there was evidence that the local board had knowingly permitted sewage to pass into the stream, and that the matter ought to be remitted to the county court judge to consider whether they had used the best available means to render it harmless.—*Yorkshire West Riding County Council v. Holmfirth Local Board*, 68 L.J. Q.B. 485.

- (i.) **C. A.**—*Waterworks—Main Bursting—Liability.*—A main belonging to a waterworks company burst, and the plaintiff's premises were flooded. *Held*, that as the main had been constructed under statutory authority, and the company were not guilty of negligence, they were not liable in damages.—*Green v. Chelsea Waterworks Co.*, 70 L.T. 547.

### Partnership:—

- (ii.) **Ch. D.**—*Action for Dissolution—Insanity—Interim Injunction against Interference.*—The plaintiff in an action for dissolution of a partnership, on the ground of the insanity of the defendant, a lunatic not so found, which action had been ordered to stand over, moved for an interim injunction to restrain the defendant from interfering with the business, or dealing with the partnership assets. *Held*, that the order ought to be made.—*J. v. S.* (No. 2), 70 L.T. 758.
- (iii.) **Ch. D.**—*Dissolution—Insanity—Partnership Act, 1890, s. 35 (a) (f).*—In an action for dissolution of partnership against a lunatic not so found, the Court refused to decree an immediate dissolution, the evidence shewing that there was a possibility of the defendant's ultimate recovery, but ordered the cause to stand over till after the long vacation.—*J. v. S.* (No. 1), 70 L.T. 757.

### Patent:—

- (iv.) **Ch. D.**—*Revocation—Petition—Consent on Special Grounds.*—The Pharmaceutical Society, with the leave of the Attorney-General, petitioned for the revocation of a patent for a medical compound on certain grounds, which included want of novelty. The respondent consented to an order for revocation, but solely for want of novelty.—*Order made for revocation with costs—In re Rendell's Patent*, 70 L.T. 756.

### Poison:—

- (v.) **Q. B. D.**—*Sale of—Compound—Pharmacy Act, 1868, ss. 1, 15.*—In a prosecution under the Act against a vendor of a compound containing a scheduled poison, the question is whether the compound contains the poison in such a quantity as to make the compound in its entirety a poison under the Act. The defendant sold a compound containing a small quantity of a scheduled poison. There were directions on the bottle stating the proper dose for adults, children, and infants. There was evidence that a whole bottle taken at once by a child would certainly be injurious, and might be fatal, but not in the case of an adult, except in case of ill-health. *Held*, that there was evidence to support the finding of the county court judge that the compound was a poison within the Act.—*Pharmaceutical Society v. Armson*, 70 L.T. 738.

### Poor Law:—

- (vi.) **Q. B. D.**—*Maintenance of Pauper—Member of Friendly Society—Divided Parishes Act, 1876, s. 23.*—When guardians apply to justices for an order directing the officers of a friendly society to pay to them moneys alleged to be due to a pauper member of the society, it is a condition precedent that the pauper "shall be entitled to a periodical payment;" and, if that point is disputed, it must be settled in the manner provided for the settlement of disputes between the society and its members before the justices can entertain the application.—*Reg. v. Richardson*, L.R. [1894] 2 Q.B. 323; 42 W.R. 540.

- (i.) **H. L.**.—*Settlement—Residence Apart from Parent while under Sixteen—Divided Parishes Act, 1876, s. 34.*—Decision of C. A. (see Vol. 18, p. 50, n.) reversed.—*West Ham Guardians v. Bethnal Green Churchwardens*, L.R. [1894] A.C. 230; 63 L.J. M.C. 97.
- (ii.) **C. A.**.—*Rating—Docks—Different Parishes—Hypothetical Tenant.*—A dock company had a number of docks, some in communication and some separate, and also quays, warehouses, offices or works. The docks were in four parishes in the S. union. In some cases a dock was in two different parishes, and in some cases a dock was partly outside the union. One dock due was taken for the use of all the docks. The dock company prepared accounts of the receipts and expenditure in each parish, shewing the amounts of dock dues earned in each parish. The guardians found the rateable value of the whole undertaking, and deducted the value of all the property other than docks. The balance, being the rateable value of the docks, they divided amongst the parishes in proportion to water area. *Held*, that, as the earnings in each parish could be shewn, the assessment was bad. The dock company was authorised to make junctions between their lines of railway and those of a railway company, but were forbidden to take tolls for the use of their railways. *Held*, that the railways ought to be assessed at the rate at which they might, but for the restriction on taking toll, be let to a hypothetical tenant.—*Hull Docks Co. v. Guardians of Sculcoates Union*, L.R. [1894] 2 Q.B. 69; 70 L.T. 742.
- (iii.) **Q. B. D.**.—*Rating—Harbour Dues.*—The appellants, commissioners for the improvement of a harbour, were empowered to levy "harbour dues" for all vessels entering the harbour, and "goods dues" and "ballast dues" for goods and ballast shipped or unshipped within the harbour. They occupied certain quays in the harbour, but the soil of the harbour was not vested in them, and there were other places in the harbour besides the said quays where ships could load and unload. The facilities afforded by the said quays largely contributed to the amount of dues received by the appellants. *Held*, that no part of the harbour dues, goods dues, and ballast dues received by the appellants was sufficiently connected with their occupation of the quays to be taken into account as enhancing their rateable value.—*Blyth Harbour Commissioners v. Churchwardens, &c., of Newsham and South Blyth*, L.R. [1894] 2 Q.B. 293; 63 L.J. M.C. 145.
- (iv.) **C. A.**.—*Rating—Mill—Stoppage of Work through Strike—Occupation during Stoppage.*—Two days, before an assessment was made on the appellants' mill, a strike occurred, and the mill was stopped. It was occupied by the appellants during the stoppage for the purpose of keeping the machinery in order. The appellants objected to the valuation list. When the objections were heard by the assessment committee who refused to amend the list, the strike had ended, after lasting several months. *Held*, that the assessment was valid, as the assessment committee were not bound to consider the particular strike, and it did not appear that they had disregarded the contingency of strikes. *Held*, also, that the assessment having been properly made, could not be reduced by treating the mill as a warehouse for storing machinery during the strike.—*Hoyle & Jackson v. Assessment Committee for Oldham*, L.R. [1894] 2 Q.B. 372; 70 L.T. 741.
- (v.) **C. A.**.—*Rating—Lighting Rate—"Coal Mines"—"Land"—Poor Relief Act, 1601.*—Decision of Q. B. D. (see Vol. 19, p. 90, i.) affirmed.—*Thursby v. Churchwardens of Briercliffe*, L.R. [1894] 2 Q.B. 11.

- (i.) **Q. B. D.**—*Rating—Sewage Works.*—The appellants occupied a sewage farm and works, which comprised a pumping station, a main which conveyed the sewage to the tanks, from which it was distributed by sewage carriers, and effluent culverts which discharged the effluent. *Held*, that the main, the sewage carriers, and the effluent culverts were all parts of the sewage works, and that the appellants were rateable in respect thereof. — *Mayor, &c., of Leicester v. Churchwardens, &c., of Beaumont Leys*, 70 L.T. 659.

#### Power:—

- (ii) **Ch. D.**—*Power of appointing Income—Construction.*—A settlement gave a testamentary power of appointing the income of a fund, and trusts of the capital were declared "subject to such appointment." *Held*, that the power extended to the capital. — *Mounsey v. Boston*, L.R. [1894] 1 Ch. 675; 63 L.J. Ch 496; 70 L.T. 727.

#### Practice:—

- (iii.) **Ch. D.**—*Administration—Persons served with Notice of Judgment—Notice of Hearing on Further Consideration.*—R.S.C., 1883, O. xvi., rr. 40, 41, 42; O. xxxvi., r. 21.—Beneficiaries under a will who have been served with notice of a judgment for administration in an action by one of the beneficiaries against the trustees, and have not entered an appearance, need not be served with notice of the hearing on further consideration, where the order to be asked for does not require them to pay money or affect them personally. — *Tyson v. Johnson*, 70 L.T. 624.
- (iv.) **Q. B. D.**—*Amendment—Writ for Service out of Jurisdiction.*—R.S.C., 1883, O. xi.; O. xxviii., rr 1, 6.—The provisions for amendment of indorsements and pleadings apply to writs issued for service out of the jurisdiction, and a claim indorsed on such a writ may be amended without the necessity of re-serving the writ or notice thereof after amendment. Where leave for amendment is necessary, the plaintiff must shew that the amended claim is in respect of a cause of action which would have entitled him, had it been preferred in the first instance, to leave to issue a writ for service out of the jurisdiction — *Holland v. Leslie*, L.R. [1894] 2 Q.B. 346; 42 W.R. 560
- (v.) **C. A.**—*Appeal—Court of Passage.*—By sect. 10 of the Liverpool Court of Passage Act, 1893, an appeal lies direct to the Court of Appeal from the judgment of the judge of the Court upon the trial of an action. — *Anderson v. Dean*, L.R. [1894] 2 Q.B. 222; 42 W.R. 472.
- (vi.) **C. A.**—*Company—Order in Winding-up—Appeal—Companies Act, 1862, s. 124.*—A person who is not a party to, but is bound by, an order made in a winding-up, cannot appeal therefrom without the leave of the Court which made the order. — *In re Securities Insurance Co.*, 70 L.T. 609; 42 W.R. 465.
- (vii.) **Ch. D.**—*Conveyance by Wife—Application to Dispense with Husband's Concurrence.*—Under the present arrangements of business, an order under sect 91 of the Fines and Recoveries Act, 1833, will not be made in the Chancery Division in an ordinary case, though there may be jurisdiction in that Division to make it, and a judge of that Division might exercise such jurisdiction under special circumstances. — *In re Giles*, 70 L.T. 757.
- (viii.) **Q. B. D.**—*Costs—Stay of Proceedings—Company in Liquidation.*—On an application to stay proceedings in an action against a company in voluntary liquidation, the judge and the master in chambers have jurisdiction to order the plaintiff to pay the costs of the proceedings. — *Foreman v. General Publishing Co.*, L.R. [1894] 2 Q.B. 380; 42 W.R. 589.

- (i.) **Q. B. D.**—*Discovery—Answer tending to Criminate.*—Maintenance is an indictable offence at common law, and the defendant in an action charging him therewith may refuse to answer interrogatories on the ground that they may criminate him.—*Alabaster v. Harness*, 70 L.T. 375.
- (ii.) **C. A.**—*Discovery—Postponement of Inspection—Question of Law—Amendment of Pleadings*—R.S.C., 1883, O. xxv., r. 2; O. xxxi., r. 20—A common order for discovery was made against defendants, who made an affidavit of documents, of which there were a great number, and then applied by summons that inspection might be postponed until certain questions of law therein mentioned, which were not raised by the pleadings, had been determined. *Held*, that the statement of defence should be amended so as to raise the points of law in question, and that there was then jurisdiction to order the points of law to be set down for argument, and to postpone inspection until they had been disposed of. *Seem*, that Order xxxi., r. 20, is not to be construed so narrowly as to mean that the right to discovery or inspection is determined by the common order, or that the Court cannot after such an order make a subsequent order that points of law should be determined before inspection.—*Lever v. Land Securities Co.*; *De Carteret v. Land Securities Co.*, 70 L.T. 323.
- (iii.) **C. A.**—*Discovery*—R.S.C., 1883, O. xxv., r. 6—R.S.C., 1893, O. xxxi., r. 2.—A judge, by allowing interrogatories under the rule first mentioned, does not preclude the party interrogated from taking objection under the later rule. Such allowance is in the discretion of the judge, from whose orders no appeal will be entertained, unless some mistake in principle is made, or some substantial injustice done.—*Peck v. Hay*, 42 W.R. 499.
- (iv.) **C. A.**—*Divorce—Evidence—Right of Co-Respondent to Cross-Examine Respondent*—Evidence given by one party affecting another party in the same litigation cannot be made admissible against such party unless there is a right of cross-examination. The evidence of a respondent cannot, therefore, be used against a co-respondent after liberty to cross-examine has been refused. *Quere*, whether a co-respondent has a right to cross-examine a respondent and *vice versa*.—*Allen v. Allen*, 42 W.R. 579.
- (v.) **C. A.**—*Evidence—Witness Called by Judge—Right to Cross-Examine*—The judge has a right to call and examine a witness at a trial, and it is in his discretion whether cross-examination should be allowed. But, as a general rule, when material evidence is given by a witness so called, the party adversely affected should be allowed to cross-examine; but only as to such of the witness's answers as are material.—*Coulson v. Desborough*, L.R. [1894] 2 Q.B. 316; 70 L.T. 617; 42 W.R. 449.
- (vi.) **C. A.**—*Execution—Receiver*.—There is no jurisdiction to make an order for a receiver by way of equitable execution except in cases in which, before the Judicature Act, the Court of Chancery would have had jurisdiction to make such an order.—*Harris v. Beauchamp Bros.*, No. 2, L.R. [1894] 1 Q.B. 801; 63 L.J. Q.B. 480; 70 L.T. 636; 42 W.R. 451.
- (vii.) **Q. B. D.**—*Justices—Appeal from—Case stated—Lodging Case*—20 d 21 Vict., c. 43, s. 2.—Upon an appeal from justices by way of a case stated, the appellant must lodge the case at the Crown office within three days after receiving it.—*Aspinall v. Sutton*, L.R. [1894] 2 Q.B. 349.



- (i.) **Ch. D.**—*Lands Clauses Act, s. 69—Investment—Supplemental Petition—Costs.*—Land had been taken by the Metropolitan Board of Works. An order was made on petition for the investment of part of the purchase-money in effecting works on the estate of which the land formed part. It appeared that the estimated cost of the works would be exceeded, and a supplemental petition was presented for leave to invest an additional sum of £375. *Held*, that the application, being in effect to vary an order made on petition, must be made by petition, and not by summons, and that the London County Council must pay the costs of the supplemental petition.—*In re Sanders*, 70 L.T. 755.
- (ii.) **P. C.**—*Order for New Trial Reversed—Verdict—Evidence.*—The Full Court of the Supreme Court of Queensland had ordered a new trial of an action tried before a jury. *Held*, that the verdict ought to stand, as there was a conflict of evidence, and the verdict was one which the jury could reasonably find.—*Innesbane (Council of) v. Martin*, L.R. [1894] A.C. 249.
- (iii.) **Q. B. D.**—*Partners—Action against—Dissolution of Firm—R.S.C., 1883, O. xlviii a., r. 1, 3, 8.*—Where an action has been brought and judgment obtained in the firm name against partners, if one of them had, to the knowledge of the plaintiff, retired from the firm before the commencement of the action, and has not appeared in his own name nor admitted that he is, nor been adjudged to be, a partner, the plaintiff cannot issue execution against him, nor have the question of his liability tried, unless he has served him with the writ.—*Wigram v. Cor, Sims, Buckley & Co.*, L.R. [1894] 1 Q.B. 792; 70 L.T. 656.
- (iv.) **Ch. D.**—*Patent—Petition for Revocation—Service out of Jurisdiction.*—A petition for revocation of a patent was served on two out of three patentees, the third being abroad. *Ordered*, that the petition be put on the witness list, but not to come on for hearing without leave, unless the absent patentee appeared by counsel on notice to him of the presentation of the petition.—*In re Kay's Patent*, 70 L.T. 756.
- (v.) **Ch. D.**—*Payment out of Court—Petition or Summons—R.S.C., 1883, O. lv., r. 2, sub-s. 1.*—*Held*, that an application for payment of money out of Court ought to be made by petition and not by summons, where the title of the applicants depended on the proof of their identity and age, and of the deaths of two persons, and where there was a question upon the construction of a will under which they claimed.—*E. p. N.E.R.*; *in re Hicks*, 70 L.T. 529.
- (vi.) **Q. B. D.**—*Pleading—Defence—General Denial—Specific Traverse—R.S.C., 1883, O. xix., r. 17.*—The plaintiff in his statement of claim set forth certain allegations of fact to support a claim for personal injuries owing to the alleged negligence of the defendants. The defendants "denied each and all the several statements and allegations set out in paragraph 2 of the statement of claim," and repeated the same form of denial with regard to paragraph 3. *Held*, that though the defence did not specifically traverse each allegation denied, it did in effect specifically deny every material allegation; that it was not embarrassing, and that if it were really required by the plaintiff it could be amended by repeating the denial specifically to each allegation.—*Adkins v. North Metropolitan Trans. Co.*, 63 L.J. Q.B. 361.
- (vii.) **Ch. D.**—*Receiver—Irish Land—Discretion of Court—Judicature Act (Ireland), 1877, s. 75.*—On an application for the appointment of a receiver of Irish land, great weight ought to be given to the provisions for dealing with such matters under the Irish Judicature Act, 1877. But where the applicants were willing that the present agent of the Irish estates, who had never had any difficulty in collecting the rents, should be appointed receiver, the Court made the appointment.—*Bolton v. Curre*, 70 L.T. 759.

- (i.) **Q. B. D.**—*Service of Writ—Foreign Firm—English Agent—R.S.C.*, O. xlviii., r. 1.—A writ was issued against a firm under its firm name. The firm was a foreign firm carrying on business abroad, but the members were British subjects. They employed the plaintiff to purchase goods for them in England, but one of the partners was generally in England and chose the goods. The writ, which was for moneys owing to the plaintiff in respect of goods purchased for the defendants and paid for by the plaintiff, was served on one of the partners while in England. *Held*, that the defendant firm did not carry on business in England, and that there was no authority for issuing the writ in the firm name, and that the issue and service ought to be set aside.—*Singleton v. Roberts, Stocks & Co.*, 70 L.T. 687.
- (ii.) **C. A.**—*Summons—"Originating Summons"—Delivery of Papers—R.S.C.*, 1883, O. lxxx., r. 1.—An originating summons is a summons by which proceedings, which under the old practice would have been commenced by bill in Chancery or by writ, are commenced without writ. A summons calling on a solicitor to deliver up his client's papers is not an "originating summons."—*In re Holloway; c.p. Pallister*, L.R. [1894] 2 Q.B. 163; 70 L.T. 615; 42 W.R. 433.
- (iii.) **Ch. D.**—*Third-party Notice—Premature Application—Double Character of Plaintiff—R.S.C.*, 1883, O. xvi., r. 48.—The plaintiff was suing in her own right. The defendants, before delivering their defence, asked leave to serve a third-party notice on her in the character of executrix. *Held*, that the application was premature, and that the rule did not apply, as the plaintiff was already a party.—*Gibson v. Gibson*, L.R. [1894] 2 Ch. 92; 70 L.T. 728; 42 W.R. 425.

### Principal and Agent:—

- (iv.) **C. A.**—*Authority to Pledge Credit of Principal—Co-trustees.*—The defendants, mother and son, as trustees of a will, were joint owners of a business, which under the trusts was to be carried on by the mother as agent for the trustees. The son was employed by the mother to purchase goods for the business, which were paid for by cheques bearing the signatures of mother and son as drawers. A person who had previously received such cheques in payment, sued the mother and son for the price of goods sold to the son for the business. *Held*, that there was evidence that the son was authorised to pledge the joint credit of his mother and himself.—*Brazier v. Camp*, 63 L.J. Q.B. 257.

### Public Health:—

- (v.) **Q. B. D.**—*Abatement of Nuisance—Summons—Notice—Public Health (London) Act, 1891, s. 128, sub-s. 1, 3.*—A summons to abate a nuisance under the Act may be addressed "to the owner or occupier" of the premises where the nuisance arises without any further name or description; and may be served on some person on the premises, or by fixing it conspicuously on the premises.—*Reg. v. Mead*, L.R. [1894] 2 Q.B. 124; 63 L.J. M.C. 128; 70 L.T. 766; 42 W.R. 442.

### Restraint of Trade:—

- (vi.) **C. A.**—*Agreement not to Carry on Business.*—Decision of Ch. D. (see Vol. 19, p. 100, v) affirmed.—*Smith v. Hancock*, 63 L.J. Ch. 477; 70 L.T. 578; 42 W.R. 465.

### Revenue:—

- (vii.) **Q. B. D.**—*Account—Stamp Duty—Land—Conversion—Customs, &c., Acts, 1881, s. 88, sub-s. (2); 1889, s. 11.*—By post-nuptial settlement land was conveyed to hold in trust for the settlor and his wife for

their respective lives, with power to sell at the request of the settlor or his wife, and after their deaths at the discretion of the trustee. The trusts of the proceeds were declared by a deed of even date. The request for sale was made, and the land still remained unsold. The settlor died leaving a wife and children. *Held*, that there was a conversion, that the land must be regarded as money from the date of the settlement, and that account duty was payable at the death of the settlor.—*Attorney-General v. Dodd*, L.R. [1894] 2 Q.B. 150; 63 L.J. Q.B. 319; 70 L.T. 660; 42 W.R. 524.

- (i.) **H. L.**—*Inventory or Probate Duty—Legacy Duty—Legatees identified by Reference to Will of another Testator.*—A. bequeathed a share of her residue to B., and failing him, to his executors and representatives. B. predeceased A., leaving a will by which he appointed executors. *Held*, that the share of A.'s residue was not part of the personal estate and effects of B., and therefore that the executors of B.'s will were not liable to pay a second inventory (or probate) duty and legacy duty on the ground that it passed under B.'s will.—*Lord Advocate v. Bogie*, L.R. [1894] A.C. 83, 70 L.T. 533.
- (ii.) **Q. B. D.**—*Income Tax—Profits—Deductions—Interest on Short Loans.*—A foreign firm had a branch house in London which was carried on as a separate business, with a separate capital. The London house obtained short loans from the foreign house and from bankers, and paid interest thereon. *Held*, that such interest could not be deducted as a necessary expenditure in ascertaining the profits.—*Anglo-Continental Guano Works v. Bell*, 70 L.T. 670.
- (iii.) **Q. B. D.**—*Income Tax—Expenses.*—Where a company is formed for the purpose of lending money, and it borrows money for the purpose of lending it in the course of business, the money being obtained by the means of the issue of debentures, *held*, that the expenses of such issue were not "expenses" in respect of which a deduction can be claimed in assessing profits for income tax.—*Texas Land and Mortgage Co. v. Holtham*, 63 L.J. Q.B. 496.
- (iv.) **Q. B. D.**—*Stamp—Bills of Exchange—Coupon for Interest—Re-Issue—Stamp Act, 1870, s. 48—Sched.—Revenue Act, 1889, s. 16.*—A foreign government issued bonds. They were provided with talons and interest coupons for ten years, the talons bearing a statement that the bearer would at the expiration of the ten years receive a fresh talon and coupons. *Held*, that the new coupons, when issued, were bills of exchange payable on demand, and that, since they were not attached to and issued with either the security or the agreement for renewal or extension of time for payment thereof, they were not exempt from duty, and must bear a 1d. stamp.—*Rothschild & Sons v. Inland Revenue Commissioners*, L.R. [1894] 2 Q.B. 142; 70 L.T. 667; 42 W.R. 542.
- (v.) **Q. B. D.**—*Stamp—Medicine—"Held out to Public"—Stamp Act, 1804, Sched. B—Medicines Stamp Act, 1812, ss. 1, 2 & Sched.*—The respondents issued a price-list, which was distributed gratis, and described a certain powder and tincture as beneficial for specified ailments, and the bottles of tincture were wrapped in handbills which described it in terms similar to those in the price-list. *Held*, that by distributing the price-list, the respondents had held out or recommended the medicines to the public, by public notice or advertisement within the meaning of the schedule to the latter Act, that it was not necessary that the advertisements should be delivered with or affixed to the medicine, that the case was not within the exemption in the schedule, and that stamp duty was payable.—*Smith v. Manon & Co.*, L.R. [1894] 2 Q.B. 363.

- (i) **Q. B. D.**—*Stamp Duty Acts, 1881 and 1893—Gift within twelve months of Death*—A gift made within twelve months preceding the death of the donor, without any reservation or power of revocation, and not being a *donatio mortis causa*, is liable to account stamp duty.—*Attorney-General v. Booth*, 63 L.J. Q.B. 356.

### Right of Way:—

- (ii) **C. A.**—*Open Space—Public User—Dedication*.—Decision of Q. B. D. (see Vol. 19, p. 58, u.) affirmed.—*Robinson v. Coupen Local Board*, 63 L.J. Q.B. 235.

### Riparian Owner:—

- (iii) **C. A.**—*Watercourse—Artificial Channel*.—The owner of land through which water flows by an artificial channel is not entitled to appropriate all such water. Nor is he entitled to diminish the flow of water by abstracting water from the springs which feed the watercourse.—*Bunting v. Hucks*, 70 L.T. 455.

### Sale of Goods:—

- (iv) **C. A.**—*Hire-Purchase—Contract—Pledge—Factors Act, 1889, ss. 2, 9*—A. had hired a piano under a hire-purchase agreement from the plaintiff. Before all the instalments had been paid A. pledged the piano with the defendant, who had no notice of the plaintiff's rights. Held, that the agreement was an agreement to buy the piano under sect 9 of the Factors Act, and that the section afforded a defence against an action by the plaintiff to recover possession upon default in payment of a subsequent instalment.—*Helby v. Matthews*, 42 W.R. 514.

### Settled Estate:—

- (v) **Ch. D.**—*Possession—Rights of Tenant for Life—Protection of Trustees—Mortgagee—New Trustee—Donee of Power Appointing himself*.—An equitable tenant for life is entitled to be let into possession on a proper case being made; but the order made for the purpose must protect the trustees, especially if the property is subject, as in leaseholds, to onerous covenants. The application may be made by originating summons, which must be served upon the trustees, and upon the mortgagee, if any, of the interest of the tenant for life, but not, in ordinary cases, upon the reversioner. The mortgagee may insist on the title deeds being left in the possession of the trustees. A female equitable tenant for life is not necessarily disabled from being let into possession. The donee of a power of appointing new trustees cannot appoint himself either solely or jointly with other trustees.—*Newen v. Barnes*, L.R. [1894] 2 Ch. 297; 70 L.T. 653.

### Settled Land:—

- (vi) **Ch. D.**—*Sale of Land—Costs—Settled Land Act, 1882*—On a sale by several persons who together constitute the person entitled to exercise the powers of a tenant for life, one set of costs only is payable out of the proceeds of sale.—*Smith v. Lancaster*, 42 W.R. 559.

### Ship:—

- (vii) **C. A.**—*Bill of Lading—Loss by Perils of the Sea—Negligence—Burden of Proof*.—Where a bill of lading contains the customary exception of loss by perils of the sea, and the shipper sues the shipowner for damage to the goods, the burden of proving that the damage was caused by the negligence of the defendant's servants will rest on the plaintiff.—*The Glendaroch*, 63 L.J. P. 89, 70 L.T. 344.

- (i.) **P. D.**—*Charter-party—Construction—Signature to Bills of Lading—Penalty.*—A charter-party provided that the captain should sign bills of lading within twenty-four hours after the cargo was on board, and that 4d. per ton per day should be paid for delay. The captain refused to sign for seventeen days, but the owners offered to sign on his behalf within twenty-four hours. *Held*, that the signature of the owners did not satisfy the charter-party. *Held*, also, that the clause was for a penalty, and not for liquidated damages.—*The Princess*, 70 L.T. 388.
- (ii.) **C. A.**—*Charter-party—Default in Loading Full Cargo—Damages.*—The defendants chartered the plaintiffs' ship for carriage of a full cargo at £1 17s. 6d. per ton. The charter-party provided that the captain should sign bills of lading at any rate of freight provided that the aggregate bill of lading freight should not fall below the charter-party freight (£5,600). The defendants shipped some cargo at £1 5s. per ton. Part of this was destroyed by a fire, in consequence of which the sailing of the ship was delayed. The defendants refused to ship any more goods, and the plaintiffs loaded the ship with goods at various freights. The plaintiffs sued for breach of the charter-party. *Held*, that the space occupied by the goods destroyed by fire was taken out of the charter-party, that the defendants were not bound to pay freight for such space, nor entitled to fill it, and that the freight earned by the plaintiffs by filling such space was not to be taken in reduction of damages. *Held*, also, that the fire only absolved the defendants from paying the freight which would have been payable on the goods destroyed, so that the amount to be deducted from the chartered freight was £1 5s. per ton, not £1 17s. 6d. per ton on such goods.—*Aitken, Lilburn & Co. v. Ernsthausen & Co.*, L.R. [1894] 1 Q.B. 773.
- (iii.) **H. L.**—*Collision.*—The T. and the O. were approaching each other on opposite courses in a narrow channel. In a manœuvre by the T. to pass another ship the T. and the O. became nearly end on. When about a mile apart the T. signalled that she was going to starboard, and at the same time ported her helm. The O. heard the signal but kept her course. When the ships were within half-a-mile the T. repeated her signal, and ported her helm again. The O. starboarded and ran across the bows of the T. The T. stopped and reversed, but ran into and sank the O. The owners of the O. admitted that she was in fault, but alleged that the T. ought to have stopped sooner. *Held*, that the T. was not to blame.—*Wilson, Sons & Co. v. Currie*, L.R. [1894] A.C. 116.
- (iv.) **C. A.**—*Collision—Fog—Indications of Risk of Collision.*—A steamship in a fog hearing the whistle of an approaching ship is not absolutely bound to stop and reverse if the indications are such as to convey that there is no risk of collision, but the burden of proof lies on the steamship to shew that the indications were of that nature. When the captain of a steamship in such a case made a greatly mistaken estimate of the distance of the approaching ship, *held*, that the burden of proof had not been sustained.—*The Knarwarter*, 63 L.J. P. 65.
- (v.) **H. L.**—*Injury to Crew—Common Employment—Merchant Shipping Act, 1876, s. 5.*—Decision of C. A. (see Vol. 17, p. 66, i.) affirmed.—*Hedley v. Pinkney & Sons Steamship Co.*, L.R. [1894] A.C. 222; 63 L.J. Q.B. 419; 70 L.T. 680; 42 W.R. 497.
- (vi.) **H. L.**—*Insurance—Mutual—Articles imported into Policy—Addition to Articles not regularly passed by Company.*—A policy issued by a mutual assurance association provided that "the provisions contained in the articles of association shall be deemed and considered part of this policy." Previously to the date of the policy the association had

resolved to alter one of its articles by providing that it should be a condition of insurance that the assured should keep one-fifth of the value of the ship uninsured. This alteration was never confirmed by special resolution, but was printed on the back of the association's policies. The pursuer, who had insured with the association, also insured with another company, and so failed to keep one-fifth uninsured. *Held*, that the condition formed part of the policy and was binding upon the pursuer, in spite of the irregularity of the procedure by which the article had been altered — *Muirhead v. Forth & North Sea Steamboat Mutual Insurance Association*, L.R. [1894] A.C. 72.

- (i.) **P. D.**—*Managing Owner—Repairs—Authority to Order.*—The managing owner or ship's husband has authority to order the necessary repairs and outfit for the ship, and his authority is not limited by the fact that she is insured. *Semble*, that the persons who do the repairs do not discharge their claims against the co-owners by reason of the fact that, failing to get cash, they have taken and renewed bills on account of such repairs — *The Huntsman*, L.R. [1894] P. 214; 70 L.T. 386.
- (ii.) **P. D.**—*Negligence—Damage—Natural Consequence.*—A ship, while getting up anchor in a gale, negligently failed to obtain the aid of a tug. She was consequently driven against a pier, and ultimately accepted the assistance of the tug. It was then only possible to tow her one direction, and the towing hawser parted, and the ship went ashore damaging the plaintiff's property. The Court was advised that the parting of the tow rope was a thing which would "very probably" happen, considering the direction in which the ship had to be towed. *Held*, that the damage was the natural and probable consequence of the original negligence, and that the ship was liable.—*The Gertor*, 70 L.T. 703.
- (iii.) **H. L.**—*Salvage—Expenditure for Common Benefit.*—A ship with a cargo of valuable and perishable goods was stranded on the French coast. The owners incurred expenditure in removing the cargo, drying it, and carting it to a port for shipping. They employed skilled persons, and a French agent. Some of the cargo, which could not be identified, was sold, and a brokerage was paid. The owners sued the consignees of cargo for general average, particular average, salvage, and other charges. *Held*, that the expenditure, though extraordinary, was reasonably incurred for the benefit of all parties, and that the consignees were liable for their share of the expenses.—*Rose v. Bank of Australasia*, 70 L.T. 422

# **Solicitor:—**

- (iv) **C. A.**—*Costs—Taxation—Disbursements while Unqualified—Attorneys and Solicitors Act, 1874, s. 12.*—A solicitor conducting a litigation delivered briefs to counsel during a period when he was not duly qualified, not having taken out a certificate, and the trial took place during that period. After he had taken out his certificate he paid fees in respect of the briefs and refreshers. *Held*, that such fees and refreshers ought not to be allowed against his client on taxation, being "disbursements on account of or in relation to an act or proceeding done or taken" while the solicitor was not duly qualified. —*Kent v. Ward*, 70 L.T. 612.
- (v.) **Ch. D.**—*Costs—Taxation—Costs of Relieving Property from Charges—Retainer—Solicitors' Remuneration Act, 1881.*—A taxing-master allowed the costs of relieving a property sold from charges, in addition to the scale fee, and found that an agreement as to costs was "fair and reasonable" on that footing. *Held*, that the finding was reasonable.

Where an order to tax ten bills is obtained, the retainer as to each bill is admitted.—*E. p. Perrett; in re Frappe*, L.R. [1894] 2 Ch. 290; 42 W.R. 475.

- (i.) **C. A. & Q. B. D.**—*Lien—Assignment of Judgment Debt—Priority—Solicitors Act, 1860, s. 28.*—A plaintiff compromised an action on terms as to certain payments by instalments, judgment being given for him. He then assigned for valuable consideration the money payable to him to a person who had been a witness in the action. The plaintiff's solicitor claimed a charging order for his costs. It was not proved that the assignee knew of the solicitor's claim. *Held*, that, as the assignee was aware of the action, he was not a "purchaser without notice," and that the solicitor was entitled to a charging order.—*Cole v. Eley*, L.R. [1894] 2 Q.B. 180 & 350; 42 W.R. 505.
- (ii.) **Ch. D.** *Lien—Costs of Firm—Deeds held personally*—A., a solicitor in partnership with another solicitor, acted for the purchaser of property, which, at the request of the purchaser, was conveyed to A., as if he were the sub-purchaser. The title deeds were handed to A. The partnership between A and his partner was dissolved, but A. retained the deeds. The client died within six years of the purchase. In an action for the administration of his estate A. claimed for the old firm and for himself a considerable sum for costs, some of which were incurred before the purchase. The chief clerk disallowed such costs as were incurred more than six years before the client's death. A. claimed a lien on the deeds for the costs so disallowed. *Held*, that he was not entitled to such lien, as the costs of the purchase of the property had been allowed, and A. could not claim a lien on deeds handed to and retained by him personally for the general costs of the old firm.—*Lloyd v. Gough*, 70 L.T. 725.
- (iii.) **C. A.**—*Taxation of Costs—Illegal Employment*—Money was subscribed by strangers and entrusted to J. to maintain litigation for the recovery of property. J. retained a solicitor, and paid him large sums. The litigation failed, and J. claimed taxation of the solicitor's bill of costs. *Held*, that the solicitor could not resist taxation or accounting for the money paid to him, on the ground that the employment for which he was retained, and for which the money was paid, was illegal.—*Jaquess v. Thomas*, L.R. [1894] 1 Q.B. 747; 70 L.T. 567.
- (iv.) **C. A.**—*Taxation—Separate Retainers*—Where several plaintiffs separately retain the same solicitor, each is entitled to a taxation of the whole bill without serving anyone except the solicitor, although, on an application to tax by any of the parties, the Court should endeavour, so far as practicable, to have all parties served.—*In re Salaman*, L.R. [1894] 2 Ch. 201; 42 W.R. 530.
- (v.) **C. A.**—*Retainer—Right of Solicitor to Terminate.*—Where a solicitor is retained to conduct an ordinary common law action, he cannot, before the conclusion of the action refuse to continue to act for his client and sue for his costs, except for some reasonable cause and upon reasonable notice.—*Underwood v. Lewis*, L.R. [1894] 2 Q.B. 306; 42 W.R. 517.
- (vi.) **Q. B. D.**—*Misconduct—Non-Payment of Counsel's Fees.*—Where the Incorporated Law Society have reported to the Court that a solicitor has received from his client payment of a bill of costs, including counsel's fees, and has improperly kept back the fees, the Court will take cognisance of the report, and will make such order as the circumstances of the case require.—*In re A Solicitor*, 63 L.J. Q.B. 397.

**Tenant for Life:—**

- (i) **Ch. D.—Remainderman—Investments—Risky Securities—Conversion Duty of Trustees.**—A testator gave his residue to trustees upon trust to allow his wife to take the income for life, and after her death upon trust for his nephew. There was no trust for conversion and no investment clause. Part of the estate consisted of gas stock. *Held*, that a tenant for life could not take the income of property which was of a wasting or perishable nature, that in order to give the wife the income of the property as it stood there must be something equivalent to a specific gift; that there was no such gift in the will, and that the trustees should be required not to convert the gas stock and invest the proceeds in consols, but to set a value thereon, and pay the tenant for life  $\frac{1}{4}$  per cent. on such value.—*Daines v. Eaton*, 70 L.T. 761.

**Tithe:—**

- (ii.) **Q. B. D.—Remission—Certificate—Assessment—Inland Revenue Act, 1877, s. 18—Tithe Act, 1891, s. 8, sub-ss. 1, 4, 5.**—An owner-occupier of land exercised the option of being assessed for income tax under schedule D. He applied under the Tithe Act for a certificate from the commissioners of the annual value of his land. They declined to give one unless he first consented to have his land assessed under schedule B. *Held*, that they were right.—*Reg. v. Tax Commissioners for Petersfield*, 63 L.J. Q.B. 357.

**Trade Mark:—**

- (iii.) **Ch. D.—Added Matter—Disclaimer—Name of Applicant—Patents, &c., Acts, 1883, ss. 62, 64, 117; 1888, s. 10, sub-ss. 2, 3 (1).**—To come within the proviso which exempts a person from disclaiming the exclusive right to use his own name as part of the matter added to the essential parts of a trade mark, it is not necessary that in the case of an individual his whole name should be put on the mark, nor in the case of a firm that the whole name of the firm or of each partner should be put thereon. It is enough that part of the name only should appear, so long as it is used fairly and *bonâ fide* in such a way that it cannot be mistaken for anything else than the name of the person or persons who own the mark.—*In re Colman's Trade Mark* L.R. [1894] 2 Ch. 115; 63 L.J. Ch. 403; 40 L.T. 398, 42 W.R. 555.
- (iv.) **P. C.—*Taches—Usur*.**—The appellants, in 1889, registered in New South Wales the word “Maizena,” which they had invented in 1856, and registered and enforced in other countries as a trade mark, but had always allowed to be used in the colony as descriptive of the article, and not of their own manufacture thereof. *Held*, that the word had become *publici juris*. The respondents had applied the word to their own goods, but did not pass them off as those of the appellants, but stated the name of the maker, and place of manufacture, and other particulars. *Held*, that they could not be restrained from such user.—*National Starch Manufacturing Co. v. Munn's Patent Maizena and Starch Co.*, L.R. [1894] A.C. 275.
- (v.) **Ch. D.—Registration—Essential Particular—Disclaimer—Patents, &c., Acts, 1883 to 1888.**—A company moved for the registration of a mark, consisting of a red label with two shields in the top corners, and a shield bearing St. George and the Dragon, also a large H. & Co., and words describing the article, and the name of the company, “Successors to Holbrook & Co.” *Held*, that the whole of this complex label could not be considered an “essential particular” within sect. 64, sub-sect. 1 (c) of the Act of 1883, and that the applicants ought to disclaim Holbrook & Co.—*In re Birmingham Vinegar Brewery Company's Trade Mark*, 70 L.T. 646.



**Tramway:—**

- (i.) **C. A.**—*Compulsory Purchase—Basis of Valuation—London Street Tramways Act, 1870, s. 44.*—*Held*, that the value of the undertaking was to be considered as being the cost of construction, less depreciation. Decision of Q. B. D. (see Vol. 19, p. 107, i.) reversed.—*In re London County Council v. London Street Tramways Co.*, L.R. [1894] 2 Q.B. 189; 68 L.J. Q.B. 438; 70 L.T. 572
- (ii.) **Ch. D.**—*Sale of Undertaking—Debenture-holders—Tramways Act, 1870, ss. 42, 44.*—*Held*, that the Court had power at the instance of debenture-holders to sell the undertaking of a tramway company as a going concern. Leave was given to the receiver and manager to spend a sum of cash in his hands in the repair of old and the purchase of new rolling stock, in order to enable the undertaking to be sold favourably.—*Bartlett v. West Metropolitan Tramways Co.*, L.R. [1894] 2 Ch. 286; 68 L.J. Ch. 519; 70 L.T. 491; 42 W.R. 500.

**Trespass:—**

- (iii.) **Q. B. D.**—*Injury to Cattle—Poisonous Tree.*—The plaintiff's horse died in consequence of eating some yew which grew entirely within the defendant's boundary. There was no evidence of any obligation on the defendant to fence against the plaintiff's cattle, or that the yew tree constituted a trap or a nuisance: *Held*, that the test was whether the horse had any right to be where he was when he received the injury; that the possession by the defendant of something attractive to cattle did not make it his duty to take precautions against trespass in pursuit of it by his neighbour's cattle, unless it was in the nature of a trap; and that the defendant was not liable.—*Ponting v. Noakes*, L.R. [1894] 2 Q.B. 281; 42 W.R. 506.

**Trustee:—**

- (iv.) **Ch. D.**—*Breach of Trust—Instigated by Tenant for Life—Equity in Remainderman—Trustee Act, 1893, s. 45.*—The trustees of a marriage settlement, at the instigation of the tenants for life, sold certain stock part of the trust estate, and advanced the proceeds to the husband on an equitable mortgage of Irish land, thereby committing a breach of trust. The husband had settled a sum secured by a mortgage of the same land. The husband by deed assigned his life interest under the settlement in the said mortgage debt to X. There was a remainderman under the settlement in existence. *Held*, that at the date of the assignment there was an equity in the remainderman, which vested in the trustees on their replacing the stock sold, and that apart from special circumstances, which had not been shewn, such equity took priority over the interest of X.—*Bolton v. Curie*, 70 L.T. 759.  
See Vendor and Purchaser, p. 145, v.

**Vendor and Purchaser:—**

- (v.) **C. A.**—*Conveyance of Land—Adjoining Road—Soil of Roadway—Presumption of Law—Rebuttal*—Decision of Ch. D. (see Vol. 19, p. 108, ii.) affirmed.—*Pryor v. Petre*, L.R. [1894] 2 Ch. 11; 70 L.T. 331; 42 W.R. 435.
- (vi.) **Ch. D.**—*Contract—Letters*—A. made a written offer to purchase B.'s property for £1,450. B.'s solicitors wrote accepting the offer, and continued "we enclose contract for your signature. On receipt of this signed by you across the stamp and deposit we will send you copy signed by him." The enclosed contract contained the usual conditions of sale and provided for a deposit, and limited the length of title to

be shewn. A. did not sign the contract. *Held*, that the letters did not constitute a contract.—*Jones v. Daniel*, L.R. [1894] 2 Ch. 582; 70 L.T. 588.

- (i.) **C. A.**—*Delay in Completion—Wilful Default of Vendor—Interest.*—A contract provided for payment of interest on the purchase-money if the completion should be deferred beyond the 24th June from any cause other than the "wilful default" of the vendors. The particulars stated that the property had been acquired, and was being sold, under a private Act. On the 16th June the purchaser found by inspecting the plans, to which he had been referred on the 12th May, that part of the property was not included in the Act. An abstract of such part was sent, and the title was accepted on the 30th September, and the purchase completed on the 13th February next. *Held*, that under the circumstances the omission of the vendors to verify the statement as to title contained in the particulars was not "wilful delay." *Held*, also, that the real cause of delay was that the purchaser was not ready with his money. *Held*, that interest must be paid for the whole time from the 24th June till the completion of the purchase.—*In re Tubbs and The Mayor, &c., of London*, 70 L.T. 719.
- (ii.) **H. L.**—*Misrepresentation—Rescission.*—A. contracted to sell a brewery to B. for £20,500, the contract stating that the basis of the arrangement was that the average profits for two years had amounted to a named sum, and that the contract was to be at an end if the profits turned out to be less. An examination of the books made it appear that the profits were about the named sum. B. contracted to sell all his rights under the contract to the C. Co., for £28,500. The brewery was conveyed to the company, and it afterwards turned out that the books had been improperly kept by a clerk, without the knowledge of A., and that the profits had not in fact been so great as they appeared to be. The company attempted to get the sale set aside, acting with the concurrence of B. *Held*, that neither of the plaintiffs could succeed; as B. had no interest in the subject-matter, and, the conveyance to the company not embodying nor intending to embody the stipulations of the contract with B. the company had no right against A.—*Edinburgh United Breweries v. Malterson*, L.R. [1894] A.C. 96.
- (iii.) **C. A.**—*Municipal Corporation—Building Scheme—Restrictive Covenants.*—*Municipal Corporations Act, 1882, s. 109.*—Decision of Ch. D. (see Vol. 19, p. 108, iv.) affirmed.—*Davis v. Corporation of Leicester*, L.R. [1894] 2 Ch. 208; 63 L.J. Ch. 440; 70 L.T. 599.
- (iv.) **Ch. D.**—*Specific Performance—Contract—Signature by Auctioneer.*—In a sale by auction, the auctioneer is the agent, not only of the vendor, but also of the purchaser, to the extent that he is entitled, if authorized to do so by the purchaser, to sign in his name and on his behalf a memorandum of the particulars of the contract sufficient to satisfy the Statute of Frauds.—*Sims v. Landray*, L.R. [1894] 2 Ch. 318; 70 L.T. 530.
- (v.) **Ch. D.**—*Trustee convicted of Felony—Transfer of Mortgage—Felony Act, 1870.*—A trustee can transfer a mortgage, part of the trust property, even after a conviction for felony, without the concurrence of the administrator appointed under the Act.—*In re Levy and the Debenture Corporation*.

### Waterworks:—

- (vi.) **Q. B. D.**—*Rate—House Occupied for part of Quarter—Waterworks Clauses Act, 1847, ss. 70, 71.*—Where a house is unoccupied at the beginning of a quarter, and becomes occupied during the quarter, the

water company are entitled only to a part of the rate proportional to the period of occupation, although they had no notice that it was unoccupied, and consequently continued the supply of water.—*East London Waterworks v. Foulkes*, L.R. [1894] 1 Q.B. 819.

- (i.) **Ch. D.**—*Water Company*—"Able and Willing" to Supply Water—*Loca Board*—*Public Health Act*, 1875, ss. 51, 52, 179, 180.—Under the plaintiffs' special Act the defendants were forbidden to construct waterworks within the plaintiffs' limits for four years so long as the plaintiffs were able and willing to supply water proper and sufficient. The plaintiffs made some unsuccessful attempts to find water, and within two years of the special Act the defendants gave them notice that they would construct waterworks unless informed within a month of the plaintiffs' ableness and willingness. The matter was referred to arbitration, and the company becoming aware that the board were forwarding a scheme for waterworks, moved for an injunction to restrain them from threatening or commencing to construct works, and from proceeding to arbitration. The arbitrators found that the company were "able and willing," and that their supply was proper and sufficient. *Held*, that the defendants must pay the costs of the action, setting off any costs incurred by them by reason of the plaintiffs seeking an injunction to restrain the arbitration.—*The Bognor Water Co. v. The Bognor Local Board*, 70 L.T. 402.

#### Will:—

- (ii.) **C. A.**—*Construction*—*Accumulations*—*Thelusson Act*—*Decision of Ch. D.* (see Vol. 19, p. 109, n.) affirmed.—*Harbin v. Masterman*, L.R. [1894] 2 Ch. 184; 63 L.J. Ch. 388; 70 L.T. 357.
- (iii.) **Ch. D.**—*Construction*—*Gift of Income to Wife for Maintenance of Children*—*Rights of Adult Children*.—Testator gave his residue in trust to pay the income to his wife for her life "for her use and benefit and for the maintenance and education of my children." The capital was given to the children at her death. *Held*, that the wife took the income subject to a trust for the maintenance and education of the children, and that the trust was not limited to children under twenty-one or unmarried. All the children having attained twenty-one, and the widow having become bankrupt, an inquiry was ordered, upon summonses by married and unmarried daughters, whether any, and if any, which of the children required maintenance.—*Booth v. Booth*, L.R. [1894] 2 Ch. 282.
- (iv.) **Ch. D.**—*Construction*—*Lapse*—*Gift to Named Persons*—*Settlement*—*Gift of real and personal estate upon trust for conversion, the proceeds to be held on trust for A., B, C., and D. in equal shares. Declaration that each of the shares should be held on trust for the legatee for life, and afterwards for her children, with further trusts over which exhausted the beneficial interest in the share. A. died before the testator, leaving children who survived the testator. Held, that the gift of A.'s share did not fail, and that her children were entitled.*—*Moreton v. Hughes*, L.R. [1894] 2 Ch. 276; 42 W.R. 438.
- (v.) **C. A.**—*Construction*—*Niece*—*Illegitimacy*—*Extrinsic Evidence*.—*Gift to testator's "niece E. W."* Neither he nor his wife had any niece, but his wife had a legitimate grandniece and an illegitimate grandniece, both named E. W. *Held*, that the illegitimate grandniece could not come into competition with the legitimate, that there was no ambiguity, and that parol evidence could not be admitted.—*Ingham v. Raynor*, L.R. [1894] 2 Ch. 83; 63 L.J. Ch. 437; 42 W.R. 520.

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# THE LAW MAGAZINE AND REVIEW.

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No. CCXCV.—FEBRUARY, 1895.

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## I.—INDIA, AS IT IS, AND AS IT MIGHT BE.

**I**F the Mango Tree scare in Behar, and the discussion to which it gave rise in the Press, has done no other good, I hope it has at least convinced the British public, that the relations between the Indian Government and the Indian people are by no means what they ought to be, and that there undoubtedly prevails in our Eastern Empire a very serious amount of discontent and disaffection, which no Government, however well satisfied with itself and its policy, can safely afford to disregard.

And the causes of this disaffection, to those who are honest enough to look facts fairly in the face, are not far to seek.

I am not alluding now to those graver causes of discontent, which are due to the fact, that India is so completely at the mercy of the Home Government, and too often the victim of its convenience and politics. As, for instance, the maintaining in India of a vast military establishment, very far beyond India's requirements, at a cost of many millions a year, simply because it is more convenient for the Home Government to quarter this huge burden upon India, and make India pay the cost of it, than to charge it in the Budget against the English taxpayer. Or, again, the denying to India, at her utmost need, the right to impose an import duty upon cottons, because the Ministry for the time being dare not run the risk

of losing the Lancashire vote at the next election; or again, the putting India to the wicked expense and worry of that useless Opium Commission, merely to please a few well-meaning gentlemen, whose influence it was desirable to retain. 'These, and many other wrongs of the same character, must be borne, I suppose, at the pleasure of the ruling power, and can only be remedied by some drastic reform in our system of government, such as Sir Auckland Colvin, to his lasting honour, has had the courage to advocate in his Article in the *Nineteenth Century*.

Let us only hope that the Commission of Enquiry, which was promised to India by the Secretary of State at the close of last Session, may be *an honest, impartial, and searching enquiry*; not a miserable mockery, like the so-called "Finance Commission" of 1886, but armed with powers which may serve to avert the ruin of India, and devise some means of preventing the recurrence of those national wrongs, which have sorely tended to bring about that ruin.

No, the causes of discontent and disaffection to which I allude here, and to which I especially invite the attention of my readers, are of a different character altogether; they are, no doubt, less substantial, and might be far more easily remedied, but they are quite as exasperating, and often more calculated to alienate the confidence and respect of the people, than those which I have characterised as national wrongs.

I allude to that arbitrary spirit, that utter want of sympathy and consideration, which so often marks the conduct of the Government, and some of the higher Civilian officials, towards our Indian subjects; and by this I mean not only the masses, but gentlemen of rank and position, both native and European, who do not happen to belong to the charmed Official circle.

Their privileges are invaded, their liberties infringed, their complaints disregarded, and even the decisions of their highest Courts of Justice set at nought, with an apparent contempt for the feelings of the people, which, if practised upon a community less loyal and long suffering than we have in India, might be followed by very serious results. And all this, strange to say, calmly and silently overlooked by that secret conclave at the India Office, whose apathy, I am afraid, can only be explained, by assuming that they do not disapprove, at any rate as strongly as they ought to do, of these high-handed proceedings.

In England we cannot understand all this. We never experience it here and cannot appreciate its ill effects: but we have seen a few instances of it lately reported in the English papers, which may serve in some degree to explain my meaning.

Take this one for an example.

Of all the privileges, I believe, which Parliament has bestowed upon India, there is none more highly prized by the people than the right of Trial by Jury; and well they may prize it. The Police are notoriously corrupt and mendacious; the Magistrates too often inexperienced; and the Government, I am sorry to say, far too prone to put an undue pressure upon the Mofussil Judges to convict: so that the lives and liberties of innocent persons are often in great jeopardy; and the best safeguard they can have is an independent Jury, who know the crooked ways of the police, and can see through their fraud and falsity.

We may, therefore, well conceive the intense feeling of indignation aroused in Bengal, when, without any proper warning or enquiry, the Government of India, at the instance of the Lieutenant-Governor, virtually abolished, with one stroke of the pen, the system of Trial by Jury in that Province.



If the Government, after due consideration, had found reason to suppose that the system was not working well, and had consulted the courts of law and public bodies who knew most about the question, and were most interested in it, and, after hearing their views, had decided in favour of the abolition, there might perhaps have been no reason to complain. But to deprive the people of this much valued privilege without giving them any opportunity of defending their rights, merely, I believe, because in certain State prosecutions the Government had failed to procure a conviction, was naturally considered as a gross act of arbitrary injustice.

Happily, however, an appeal to Parliament and the strong arm of the Secretary of State had the effect of restoring the right, and preventing what might otherwise have occasioned a somewhat serious outbreak. But the position in which the Government was thus placed was certainly not a dignified one, nor likely to improve their prestige in the estimation of the people.

I cannot help thinking that Lord Lansdowne, when, in his farewell address before leaving India, he complained that the House of Commons was too prone to listen to Indian grievances, must have forgotten this little incident of Trial by Jury.

I wonder where the public are to seek redress, when they are robbed of their rights in this arbitrary way, except by appealing to Parliament; and what use it would be for them to thunder ever so loudly at the door of that dark chamber in the India Office, if the ear of Parliament were not open to their complaints.

Now I do not propose to multiply illustrations, though I am sorry to say they are only too abundant. I cannot do so without making, or seeming to make, personal attacks upon particular officials, which is very far from my wish or intention; and still less is it my wish to attack the Civil

Service generally. I know well what a splendid hard-writing corps of public servants they are, and what difficulties they have to encounter, and I should like to see them more honoured and respected than some of them are at present. But what I do condemn is, that un-English, ungenerous spirit of arbitrary intolerance, which pervades more or less the whole official system in India, which is encouraged, instead of corrected, by some of the leading members of the service, and which I am quite satisfied is at the root of all the discontent, bitterness, and disaffection,\* which all true friends of India so heartily deplore.

But of all the many acts of injustice which have marked the conduct of the Government of India of late years, there is none in my opinion which can at all compare with their insolent treatment of the Indian National Congress. There is no subject, I consider, upon which the English press and the English public have been so cruelly and persistently misled by the Government party.

As an illustration of the sort of spirit which animates them against the Congress, I would refer to an article written by Sir George Chesney, K.C.B., in the *Nineteenth Century* for June last.

Sir George Chesney, I need hardly say, is an Indian officer of high position. He has spent the better part of his life in the service of the Government, and he was a member of the Viceregal Council from 1886 to 1891.

He is moreover well known as the author of a work styled "*Indian Polity*," which has just gone through a third edition in the press. He is a staunch supporter of the Government of India, and we may therefore, I presume, accept what he says in the Article to which I have alluded, as being substantially in accordance with Government views and principles.

If any of my readers have not seen that Article, I invite them to read it. It illustrates very forcibly the spirit of

intolerance to which I have alluded, and I can hardly conceive anything more calculated to wound the feelings and excite the disaffection of a people keenly sensitive to ridicule and insult, than the tone and language in which they are spoken of in that Article.

He describes the Indian people generally as absolutely unfit for free institutions ; and if I understand him rightly, he would wish to deprive them, if he could, of those three great blessings, which we are taught to regard as the very elements of freedom—a free Press, a free Bar, and the right of publicly discussing their political views and opinions.

But his attacks are more particularly directed against the "Indian National Congress." He holds it up in most contemptuous language to the ridicule and obloquy of the English people. He speaks of it as "*a class outside and apart from the people of India, properly so called ; a body made up of pleaders in the Law Courts, ex-students from Government Colleges, and the class which works the Native Press.*" He derides their proceedings, insults their Chairmen, and winds up by saying : "*In fact the holders of these Congresses are a set of inept blundering political charlatans. They have never made one useful or practical suggestion, but their proceedings, when not merely silly, are undoubtedly mischievous.*"

Now I think I ought to say, before I proceed further, that so far as I am personally concerned, I am at least as strong a Tory as Sir George Chesney himself. I mention this, not because I am weak enough to suppose that anybody cares at all what my political views may be, but merely to satisfy my readers, if I can, before I come to deal with the pith of my subject, that I am not at all likely to take too Radical a view of the Indian situation, or to espouse the cause of the people against the Government, except for some very good reason. I went out to India in 1875, believing, as most Englishmen do, that our Government

there was a model of paternal rule, and I was most unwilling to come to any other conclusion, until the truth forced itself upon me with a weight which it was impossible to resist.

Having said thus much, I will now deal with what seems to be the principal object of Sir George Chesney's attack, namely, the National Congress, and I propose to consider :

First, who the gentlemen are who compose the Congress; and,

Secondly, what they have done to deserve Sir George Chesney's obloquy and insults.

1st. The Indian National Congress is a large, influential, and important assembly of earnest and patriotic gentlemen, who, since 1885, have at the close of each year met at one or other of the large centres in India, such as Calcutta, Madras, or Bombay, to discuss their political views and opinions.

They consist of delegates from every part of India, who are duly elected at a number of divisional headquarters. We are told that, at the Congress meeting in Allahabad, in the year 1888, fully three millions of men took a direct part in the election of these delegates, who themselves numbered no fewer than 1,248. The constitution of this important body was thoroughly representative; it consisted of Princes, Rajahs, Nawabs, 54 members of noble families, Members of Council, honorary magistrates, chairmen and commissioners of municipalities, Fellows of Universities, members of Local Boards, and professional men, such as engineers, merchants, bankers, journalists, landed proprietors, shopkeepers, clergymen, priests, Professors of Colleges, Zemindars and others.

I should also say that they were thoroughly representative as regards religion, as well as their rank and profession.

The Hindus, of various castes,	numbered	...	964
The Mohammedans	...	...	222
The Christians	...	...	38
The Jains	...	...	11

The numbers of each rank, profession and calling will be found in the printed Report of the proceedings of that Congress, published by Hamilton, Adams & Co., Paternoster Row, and I hope that some of my readers will care to study it.

I have instanced this particular Report for three reasons—

1st. Because the place where the Congress was held was Allahabad, an especially central position.

2nd. Because the Report of that meeting gives the number, rank, &c., of the delegates more fully than any other which I am able to obtain.

And 3rdly. Because at the time when this Congress was held, the Government had done their very utmost to discourage and put down the Congress movement, so that the meeting cannot be said to have been held under favourable circumstances.

Thus we see how utterly unfounded is the statement made by Sir George Chesney that the Congress is largely made up "*of pleaders in the Law Courts, of ex-students from the Government Colleges, and the class which works the Native Press.*"

So far as Bengal is concerned, I know it to be untrue. I am personally acquainted with several of these gentlemen. They have often been guests at my own house. I have met them constantly in the best native society in Calcutta, at Government House Levées, and at Government House parties: and I should think that Sir George Chesney, although he may not have known them personally, must frequently have met them there himself.

It is also utterly untrue, that they are, as Sir George Chesney would suggest, *an isolated class*. They are no more isolated, than the members of the Carlton or the Reform or any other Club in London; and I may also say, that I know many native gentlemen of high rank and position, who, although thoroughly favourable to its views,

have been deterred from taking as direct and open a part in the Congress proceedings as they would have wished to do, by the determined jealous hostility which the Government have manifested towards the movement.

2nd. And now, secondly, let us see what these gentlemen have done to deserve Sir George Chesney's invective.

He says that they are "*a set of inept blundering political charlatans ; that they have never made one useful or practical suggestion, and that their proceedings, when not merely silly, are undoubtedly mischievous.*" This is the language in which the member for Oxford, a General in Her Majesty's Army, and K.C.B., thinks fit to insult these gentlemen, who were only lately under his rule as one of the members of the Viceregal Council ; and now, what have they done to deserve this choice invective ?

I will tell you what they have done. They have dared to think for themselves : and not only for themselves, but for the millions of poor ignorant people, who compose our Indian Empire. They have been content to sacrifice their own interests, and to brave the displeasure of Government, in order to lend a helping hand to those poor people.

They have had the courage and the patriotism to denounce abuses, which have disgraced our Indian rule for years past ; which have been condemned by public opinion in India and in England, and to which the Indian Government appear to cling with a tenacity which seems utterly inexplicable. They have dared to propose reforms which, despite the resistance of the Government, have been approved by Parliament, and to endeavour to stay that fearful amount of extravagance, which has been going on in India for years past, and has been the means, as some of our best and wisest counsellors consider, of bringing our Eastern Empire to the verge of Bankruptcy.

This is what these good men have done to deserve the taunts and insults of the member for Oxford city, and the relentless persecution of the Government of India.

And now, as to their never having made one useful or practical suggestion, and as to their proceedings, when not merely silly, being undoubtedly mischievous, I am afraid Sir George Chesney must be a little oblivious.

What does he say to the Indian Councils Act of 1892 ?

That was a reform, I take leave to say, entirely due to the strenuous exertions of the Congress. It was proposed and carried at their very first meeting in 1885. They pressed it in vain upon the attention of the Government year after year, until at last Mr. Gladstone yielded to their urgent solicitations, by passing the Act of 1892.

It certainly is rather amusing under these circumstances, to find Sir George Chesney, in the last edition of his *Indian Polity*, actually modest enough to attempt to take credit to the Government of India for passing this measure, which they had been steadily resisting as long as they could, and which they were only obliged to take in hand at last, for the purpose of *defeating*, as far as possible, the more liberal intentions of Parliament.

As regards the Viceregal Council, I am sorry to say they have succeeded in reducing the intended reform almost to a dead letter. The Government still have entirely their own way in the Council, and their officials are forced to vote for them, whether they will or no. Only witness the lamentable scene which occurred the other day at Calcutta on the question of the cotton duties, when the whole of the non-official members voted against the Government, and some of the official members would have done the same, had they not been forced, like so many dummies, to obey the orders of the Secretary of State. What a mockery to call this a Legislative Council !

Look again at the Resolution so strongly urged by the Congress from the very first in favour of the Separation of Executive and Judicial functions. It is almost impossible to conceive the injustice that has been worked in India by uniting these powers in the same official. The Government know this perfectly well; the Courts of Justice have urged it over and over again; the whole of the non-official community in India abhors the present system; and I am happy to say, that after a long struggle on the part of the Congress, two successive Secretaries of State (Lord Cross and Lord Kimberley) have, in the House of Lords, admitted its iniquity. But the Government still clings to the abuse.

Then again, look at the following Resolutions of Congress:—

1. Against the enormously increasing military expenditure, which Sir Auckland Colvin considers, in common with thousands of other good men, as the main cause of India's distress.

2. In favour of reform in the Police Administration, which, indeed, is most sorely needed.

3. In favour of a Legislative Council for the Punjab.

4. In favour of allowing prisoners in warrant cases to be tried (if they wish it) at the Sessions.

5. In favour of Lord Northbrook's motion in the House of Lords, for a strict enquiry into the Home charges.

6. In favour of appointing Barristers instead of Civilians to some of the District Judgeships.

7. In favour of the establishment of military colleges in India; a resolution, which we were given to understand, was favourably considered by the Duke of Connaught.

I do not enlarge upon these Resolutions, because the English public would hardly understand their merits; but speaking for myself, I entirely approve them; and they have also been approved by thousands of well-informed, educated gentlemen, who, I take leave to say,



with all respect to Sir George Chesney, know quite as much about their merits as Government officers.

I quite admit there are other Resolutions, with which I disagree as strongly as Sir George Chesney ; as for instance, the one in favour of simultaneous examinations in England and India for the Civil Service. If that were carried out, the English element in the service would be inevitably swamped in a very few years ; and it would be absolutely impossible to carry on British rule in India without a competent staff of British officials to work it.

But at the same time it seems hardly respectful to call the Congress leaders a set of "*inept political charlatans*," merely because they pass a Resolution which a majority in the House of Commons thinks proper to approve.

Sir George also, I see, finds fault with the Congress, because in dealing with the poverty of the masses, he imagines that they have lost sight of the fact, that the Government has spent upwards of thirty millions of money during the last few years, in trying to cope with this difficulty. But here again he is mistaken. The Congress are only too mindful of these facts, and well they may be ; because *it is their money and the money of their fellow countrymen* which has been spent in this way ; and they think, and so, I believe, do the great mass of intelligent people in India, that a large proportion of it has been utterly wasted, and that it might have been far more profitably applied in other ways, if the people (through the Provincial Councils or otherwise) could have had some voice in its application.

Now I wish to say further, in conclusion, with regard to the Congress, that I defy any man to find fault with the perfect loyalty and respect to Her Majesty and the Ruling Power, with which its proceedings are conducted. I have studied them from time to time very carefully ; I have never seen a single instance of any disloyal sentiment or

expression; and I invite Sir George Chesney or any one else to point out anything of the kind.

It seems to me that, so far from being in any way objectionable, the Congress affords an open, honest, and loyal, means of making the views and wishes of the most intelligent section of the Indian people known to the Government. We want no secret societies, no Nihilists or Socialists, either here or in India; and I firmly believe that, if the Congress or any similar Institution had existed in India in the year 1857, we should never have experienced the horrors of the Indian Mutiny.

If our Rulers in India, instead of trying to balance themselves on a dangerous pinnacle of despotic intolerance, would only descend to a safer level, and invite the confidence and co-operation of the people, I believe that they would find the task of Government far easier in India, than Lord Rosebery and his colleagues find it in the United Kingdom.

And now, what shall we say with regard to the Native Press?

Sir George Chesney says it is seditious; that it fomented disaffection against British Rule; and he would cramp its freedom by placing it under Government control. In other words, he would wish the Government to take the law into their own hands, and prevent any criticism by the Press of any high-handed conduct on the part of Government officials. I believe that any attempted coercion of this kind would be a most disastrous step. It was considered a very unwise measure in Lord Lytton's time, and it would be far worse now. What Sir George calls sedition I do not know. I can only say I read Native Papers myself week after week, and never see anything there at all approaching sedition, or even disloyalty or disrespect to English Rule.

What I do find there, and what I rejoice to find, is thoroughly well deserved censure of the arbitrary conduct of many of the Government officials. I am afraid this is

exactly what the Government would wish to repress. I consider it a most wholesome and salutary means of bringing the misconduct of Government officers to the notice not only of the Indian public, but of the Courts of Justice. In many remote parts of the Indian Mofussil this action of the Press is literally the only means of bringing such offences to light, and of preventing the most outrageous acts of petty tyranny.

And now, lastly, one word more with regard to the Native pleaders. I think that Sir George Chesney does them great injustice and I suspect his knowledge of them and their doings is rather limited. They are now far better educated, and a very superior class of men, compared with what they were twenty years ago. There is, of course, great room for improvement, more especially in the more remote towns and villages; but they will improve, no doubt, as Solicitors have done in this country, with the march of civilization, and a stricter surveillance by the Courts in which they practise. As for depriving unfortunate prisoners, as Sir George Chesney would do, of the right of being defended by a professional pleader, it would be simply the grossest injustice. These poor men, as I have pointed out before, are constantly the victims of the fraud and falsehood of the Police; and if accused persons in the Mofussil were left, without any professional assistance at all, to the tender mercies of an inexperienced Magistrate and an artful policeman, they would have absolutely no chance of obtaining justice.

I am afraid that in the foregoing remarks I may have appeared to deal too personally with Sir George Chesney himself. I can assure my readers that this is very far from my intention. Sir George Chesney has been for years a very valuable and respected Government officer, and I have merely dealt with his Article in the *Nineteenth Century* as containing the views of a late member of the Viceroy's

Council, and a strong supporter and exponent of Government views and principles; and I have discussed them upon that footing.

The spirit which he manifests throughout, and which I cannot too strongly deprecate, is only, I regret to say, a reflex of that which is manifesting itself more and more strongly amongst our leading officials; which has already worked an infinity of harm, and will, I feel sure, if persisted in, be the means of estranging more and more the respect of the Natives and their confidence in the English Rule.

RICHARD GARTH.

## II.—THE GOVERNMENT OF INDIA, AND ITS REFORM THROUGH PARLIAMENTARY INSTITUTIONS.

### I.

**F**ORTY years ago, a policy of ruthless spoliation, executed in India in violation alike of treaties and engagements and of all sense of fairness and probity, resulted in the rebellion and mutinies of 1857-58, when many of our Indian provinces became the scene of anarchy, outrage and warfare, and British supremacy, to use the words of the historian, “trembled in the balance for upwards of a year.” Parliament then constituted a new form of government intended to secure greater protection for life and property in India; and Her Gracious Majesty the Queen, speaking in the name of the English nation, addressed a solemn Proclamation to the Indian people, in which she said:—“We hold ourselves bound to the natives  
“of our Indian territories by the same obligations of duty  
“which bind us to all our other subjects, and those  
“obligations, by the blessing of Almighty God, we shall

"faithfully and conscientiously fulfil." This Royal promise was hailed throughout India as the inauguration of an era of justice to all classes; and Professor Fawcett, when quoting the Proclamation in Parliament, said:—"A more solemn promise than is contained in these words was never given by a great nation. How has it been fulfilled?" This question suggests itself with still greater force and significance at the present time, in view of the critical state of things prevailing in India; and it is proposed, in the following pages, to review the provisions which Parliament made for the better government of India, and to see how far the servants of the Crown, whose duty it has been to carry those provisions into effect, have faithfully and conscientiously redeemed the pledge given by their Sovereign.

Act 106 of 1858 provided that India was thenceforth to be governed in the name of the Queen by one of Her Majesty's Principal Secretaries of State with the aid of a Council of competent persons appointed to hold office during good behaviour; and it was specially stipulated in that Act that no appropriation of Indian revenue should be made without the concurrence of the Council, and that, except for preventing and repelling actual invasion of our Indian possessions, the revenues of India should not, without the consent of both Houses of Parliament, be applicable to defray military operations carried on beyond the Indian frontier.

Act 67 of 1861 provided that, for the better exercise of the power of making laws and regulations, the Governor-General should appoint, in addition to the ordinary and extraordinary members of his Council, a number of non-official persons who should be summoned to all the meetings held for the purpose of making laws and regulations.

Act 104 of 1861 provided that High Courts of Judicature should be established by Letters Patent under the Great Seal of the United Kingdom; that the Judges of those

Courts should hold their offices during Her Majesty's pleasure; that one-third of the Judges should be barristers of not less than five years' standing; that each Court should have superintendence over all the Courts subject to its Appellate Jurisdiction, and issue rules for regulating the practice and proceedings of such subordinate Courts, with power to alter such rules from time to time.

The spirit and intention of the above-mentioned statutes are alike unmistakeable. By Act 106 of 1858, requiring the Indian Secretary of State to consult his Council and to conform to its opinion in all matters involving the expenditure of Indian revenue, Parliament manifestly intended that the Secretary of State should not act arbitrarily, or under the influence of irresponsible advisers who might be interested in a misappropriation of the revenues of India. Furthermore, the strict injunction against the application of Indian revenue to military operations beyond the Indian frontier, was most probably intended to restrain the influence of enthusiastic military advisers prone to urge foreign conquest, regardless of considerations of vital importance to the State; and it is by no means improbable that such injunction was specially intended to prevent military ventures in Afghanistan, such as had resulted so deplorably in 1838-42.

By the Indian Councils Act, 1861, Parliament clearly intended that the laws to be enacted for India should result from the free deliberations both of experienced officials and of non-official persons competent to represent the wants and feelings of the people. It is therefore contrary to the spirit and intention of that Act, that the Official members of the Indian Legislature should be, as they actually are, prohibited from recording their votes in accordance with their convictions and their conscience, and directed to record them simply in obedience to the orders of the Secretary of State. It is likewise a violation

of the Indian Councils Act, 1861, that the Non-Official members of the Legislature should, whenever the Executive may desire it, be excluded from the Legislative Council, by its meeting being convened in the Himalaya mountains or in some other part of India where the Non-Official members practically cannot attend.

Lastly, by establishing High Courts in the Presidency towns, with Appellate jurisdiction and power of supervision and control over the other tribunals established in the same Presidency, Parliament evidently intended to secure the due administration of Justice and the supremacy of the Law throughout those Presidencies. That intention, however, has been flagrantly defeated, and the spirit of the Act deliberately violated, by the Executive using the Legislature for the illegal creation of Courts vested with excessive summary powers, from the decisions of which, under the spurious legislation enacted by the Government, an appeal to the High Court, in some cases does not lie, in others is effectually obstructed. The illegal conduct of the Secretary of State has been carried still further. Government servants have, in violation of Act 104 of 1861, been appointed Judges of the High Courts, although they are, under special covenants, removable from their appointments as Judges, at the pleasure of the Government. The independence of the Crown Courts has thus been directly and flagrantly assailed by the Indian Secretary of State, and a condition of things subversive of Law and Justice is being established in India, such as existed in England before the Revolution, and from which the people of Great Britain and Ireland were relieved only by the expulsion of the Stuarts and by the Act of Settlement, which is the main support of the British Constitution.

It will thus be seen that the Queen's solemn promise of equal justice to all her subjects, and the Acts of Parliaments

constituting the new *régime* for India which was inaugurated by Her Majesty's proclamation, have been deliberately disregarded and openly violated by the Crown Minister intrusted with their fulfilment. Let us now review the results of this nefarious conduct.

The Indian Exchequer is insolvent and on the brink of bankruptcy, the revenues of the country having been diverted from their legitimate purposes, and applied, in violation of the *Act for the better government of India*, to military operations beyond the Indian frontier. Oppressive taxes and illegal modes of assessment and collection have created intense irritation, much suffering, and popular discontent throughout the length and breadth of the land. The Indian Legislature has been deprived of its Constitutional freedom of deliberation, and Bills have been enacted by the exercise of powers which Parliament never conferred on the Government of India. The Inferior tribunals of the country have been illegally withdrawn from the influence of the High Courts, and have, under the control of the Executive, been made the instruments of injustice, rapine and revenge.

That this description of the state of things prevailing in India is not open to the charge of distortion, or even of exaggeration, may be seen at once from the public prints, English and vernacular, in every province of the Indian Empire, and from the proceedings which, almost daily, disgrace the administration of Justice in the District Courts and the subordinate tribunals of the country. Instances of grave illegality and injustice, perpetrated through the instrumentality of those tribunals, have been exposed in the *Law Magazine and Review* during the last three years—instances of private property being illegally seized and appropriated by the Indian Government, as in the Kôt succession, the Sukrâj Knar, the Singampatti, the Bhaunandpur, the Jamalpore Doba, and other cases; of



innocent men being sentenced to imprisonment, transportation or death, without a tittle of admissible evidence of their guilt, as in the Baladhun and Doba and numberless other cases; of highly respectable members of the community being subjected to wanton insult and injury, with no other object than to render them submissive to the illegal pretensions and demands of the Executive, as in the case of Raja Surj Kant of Mymensing, a distinguished member of Indian society and a benefactor of his country, whose public services and honourable character were proclaimed by the Government itself. This gentleman nevertheless was criminally indicted and made to stand in the felons' dock on a false charge of having neglected a *municipal* duty; and he was ultimately subjected to about 100,000 Rs. of costs in order to appeal to the High Court and to prevent the full execution of the Revenue Collector's cruel project against him.

While the present Article is being written, the *Dacca Prokash* brings the report of two cases of grave misconduct on the part of Revenue Collectors vested with Judicial powers. The perversity exhibited in these instances would be incredible were it not that the conduct of Fiscal officers in every part of India is exhibiting the same disregard of both the Law and the dictates of Humanity and common fairness. Indeed, the fact that such conduct, instead of being reprovod by the Government, is condoned and even encouraged, would indicate an intention to incite the people to open resistance, in order to create a plea for calling in the military and more speedily enforcing the illegal exactions of the Authorities.

Of the two cases which have suggested the above remarks, in one, the Deputy-Collector of Dacca sentenced a man to imprisonment for three months on an entirely unsubstantiated charge; and when the sentence was quashed on appeal to the High Court, the order to release

the prisoner was kept back for a time as a defiance to that Court and a discouragement to similar appeals in future. In the other case, the same Revenue officer convicted a man, Thakurdas, on a false charge of theft, sentenced him to be whipped, and actually insisted on having the sentence executed, without waiting for the result of an appeal which had meanwhile been filed, and which resulted in the sentence being cancelled. The Native papers are loudly calling the attention of the community to the atrocious fact that an innocent man has been illegally subjected to a brutal and degrading ordeal, while the paternal British Government of India, who failed to protect him, withholds from him all means of obtaining redress.

Then, as regards official spoliation, among the many instances which have recently come to light, the Forest Administration case reported in the *Pioneer* of 4th November last, is remarkable for the raid which Fiscal officers carried on in the lawless manner of soldiers raiding an enemy's country, and for the perversity of the Deputy-Collector acting as Magistrate, who alleged that it was his duty to convict certain men charged with eluding the Forest regulations of the Government, simply because the prosecution had been ordered by his superior officer, the Collector-Magistrate of the district. As the case is fully reported in the *Pioneer*, a paper well known for the correctness of the information to which it gives publicity, it may suffice here to quote the following passages from the speech of the counsel for the defence, which expose the unprincipled proceedings of those Indian Law Courts which are presided over by Revenue officers vested with Judicial power.

" I should like to get down on the record the opinion expressed by the Court yesterday that this Court had no concern whether the case is illegal or otherwise, inasmuch as prosecution had been ordered by the District Magistrate! This is very important as showing that the

" Court is not sitting as a Court of Justice, but merely as a  
 " subordinate Court bound to enforce the orders of the  
 " District Magistrate, whether they be legal or not! This  
 " being admitted, the frame of mind in which the Court is  
 " trying the case, and its conception of its duties in the  
 " matter, reduce the trial into a farce. As the District  
 " Magistrate ordered the prosecution and is virtually the  
 " prosecutor, the Court, on its own showing, feels bound to  
 " convict, irrespective of the merits of the case! The  
 " Court also disallows the evidence tending to prove that  
 " the witness (the Deputy-Tehsildar) behaved illegally, on  
 " the ground that the District Magistrate condoned the  
 " illegality. I wish to point out that two wrongs do not  
 " make a right. If the District Magistrate condoned the  
 " illegality of the Deputy-Tehsildar, he behaved illegally  
 " also, and that is no justification for this Court to carry  
 " the illegality one step further still. I would impress upon  
 " the Court that it sits as an independent Court of Justice  
 " to protect the people from oppression, and not to uphold  
 " illegality simply because the District Magistrate has  
 " condoned it. The Court is sitting as an independent  
 " Court to see justice done, not to carry out the behests  
 " of any official, however exalted that official's position  
 " may be. The highest, the holiest function of this  
 " Court—the function which casts a halo round a court  
 " of justice and which secures for it the esteem and  
 " veneration of mankind—is to succour the oppressed from  
 " the powerful hand of authority wrongfully and illegally  
 " applied, not to make that hand more powerful and direful.  
 " This is a case which would claim the sympathies of the  
 " judicial and the impartial mind. Here we see a  
 " Magistrate breaking through the safeguards with which  
 " a benevolent Government has sought to secure the  
 " liberties of the people; illegally entering their houses,  
 " harrying them as if they were beasts who did not possess

“ an immortal soul and the glorious privilege of a free  
“ manhood ; piling illegality upon illegality, setting the  
“ orders of the Legislature and of the Government at  
“ defiance, equally with the liberties of the people ; and  
“ then coming into this Court for sanction of his illegal and  
“ infamous acts. I cannot believe that this Court has so  
“ poor a conception of its high and noble duties, privileges,  
“ and powers, as to hold that it must endorse this infamy  
“ and illegality simply because it believes that an officer of  
“ an exalted position has done so. There are broad rules  
“ for the guidance of the Court, which inculcate that its  
“ duty is the vindication of justice, not the strengthening  
“ of the arm of power—particularly when that power is  
“ illegally applied. I call upon the Court to act fearlessly up  
“ to those broad rules, to enforce the ordinances of the law,  
“ not the behests of superior authority, and to give effect  
“ to the promise which His Excellency the Governor made  
“ to the people the other day during his tour, when he gave  
“ them his word as a nobleman and administrator and the  
“ ruler of a great dependency, that the magistrate would  
“ protect them from any rigorous application or straining of  
“ the Forest laws, and that if the Magistrate failed to do so,  
“ the particular case in which such failure occurred should  
“ be brought to his knowledge. In this case the liberty of the  
“ subject has been violated, villages have been raided whole-  
“ sale, houses illegally entered, the very cots (bedsteads) of  
“ the people passed down from father to son for a generation,  
“ seized and confiscated, and a perfect reign of terror  
“ established throughout the district—and the heinousness  
“ of these infamies has been aggravated by the fact that  
“ the perpetrator is a Magistrate to whom the administra-  
“ tion especially looks to protect the people from such  
“ oppression and abuse of power. I call upon this Court  
“ not to allow the guilt of these proceedings to soil its  
“ dignity by countenancing such illegalities. These cases

“ have been born in illegality, nurtured in illegality, and it  
 “ is now sought to mature them in illegality by getting this  
 “ Court to accord to them its sanction and countenance.”

## II.

Let us now review the results of the Indian administration exposed in the preceding portion of this Article, and see what measures would best serve to arrest the decline in the finances, to raise the administration of justice from its degraded condition, and to secure the country from similar evils in future.

The situation is at once deplorable and dangerous. The finances have been declining for years, and are now in a most critical state. The depreciation which silver has undergone during the last quarter of a century has been a constant source of embarrassment and anxiety; and successive Finance ministers have warned our Government in impressive terms to prepare for a continued fall in the value of the silver rupee in its relation to the gold currency of the United Kingdom. The warning has been entirely neglected, and much of the present financial crisis is due to that neglect; but its chief and immediate cause is the inordinate growth in the military expenditure of the Indian Government, as Sir Auckland Colvin conclusively demonstrated in the *Nineteenth Century* for October last. In whatever proportions, however, various causes may have contributed to bring about the present situation, the startling fact stares us in the face that the excess of expenditure over revenue and the raising of loans for the difference have become ordinary features in Indian Finance, and that the Indian Exchequer, under such ominous conditions, is steadily drifting towards bankruptcy. It is equally startling to observe that, in this perilous situation, no economy is proposed, no earnest and intelligent effort is made to avert the impending crisis. This indifference on the part of the

Indian Government to a future both alarming and proximate, seems unaccountable except as a consequence of the vicious system of government imposed on India—a system under which the finances of the country are controlled by a Minister whose interest and responsibility in their safety are but remote and transient, being terminable any day with a change in the British Ministry; while interests of a permanent and most powerful nature—the interests of his party—impel him constantly to sacrifice the finances of India to ends which may strengthen and prolong the Cabinet of which he is a member: Under such conditions it would be unreasonable to look for any measure of substantial reform from the willing action of the Secretary of State, seeing that all such reform must necessarily strip him of the quasi-arbitrary power which he now wields. Indeed, it has long been evident that the Indian Secretary's power must be both strictly defined and kept within the defined limits before any measure of reform can have the effect which it is intended to produce.

It has often been said that the financial condition of a State faithfully represents the state of its administration. This proposition seems fully realised in India where the illegal exactions and the oppression of Fiscal officers are systematically condoned and upheld by tribunals presided over by Government servants, and where the reign of Law and Justice has virtually ceased in every province of the Empire. Agriculture, the staple industry of the country, prospered under the laws and regulations which obtained before the inauguration of the present *régime*. The system of periodically re-assessing the land tax, which prevails over a great part of India, hinders, it is true, the development of that industry, by allowing arbitrary enhancements at each settlement—a condition which discourages the employment of capital in the improvement of the soil by exposing the fruit of such capital to be absorbed in the enhancement at

the next settlement. The danger involved in this system is officially recorded in the history of the Bombay Presidency, where "the over-estimate acted upon by our early collectors "drained the country of its agricultural capital, which "accounts for the poverty and distress in which the "cultivating classes were subsequently plunged" (*Deccan Riots Commission*, C. 207, 1878, para. 33). Wiser counsels, however, prevailed later, and when the new settlements had to be made, about the year 1840, great moderation in the assessments was peremptorily enjoined in the following critical terms by Sir George Wingate, one of the most distinguished Revenue officers of the Presidency:—"No "unnecessary reduction can injure the country, and the "Government revenue can only suffer to the extent of such "reduction. An error upon one side involves the inevitable "ruin of the country; an error upon the other, some "inconsiderable sacrifice of the finance of the State; and "with such unequal stakes depending, can we hesitate as "to which should be given the preponderance?" The fruit borne by this policy of moderation is succinctly described in the following extract from the *Report* already cited:—"The country gradually recovered under "the new assessments, and the cultivation extended until "all cultivable land was brought under the plough. "Population and agricultural capital of all kinds increased "steadily; and in 1862 began a period of extraordinary "prosperity."

This prosperous condition of the people (which a wise Government would have striven to maintain, as being the source of national wealth whence additional sources of revenue would accrue to the State) only excited the cupidity of the new Government of India, whose precarious tenure of office made it eager to grasp and use every financial advantage it could encompass, careless of a future in which it could feel no strong interest, and entirely regardless of

the sacred character of its mission. Accordingly, in the new settlements made about the year 1870, the land tax was suddenly enhanced to a literally outrageous and cruel extent, the increase in many instances exceeding 100 per cent., and amounting on the whole to upwards of 60 per cent. beyond the previous demand. The injury and suffering inflicted by this policy of rapacity are but faintly depicted in the following paragraph of the *Report* already mentioned :—“ The land settlements were enhanced between 1869 and “ 1872. From 1870 to 1874 there was a marked difficulty “ in collecting the revenue, and the area of cultivation con- “ tracted at the same time.” Significant details, however, are found in the local reports, showing that in 1872-73 10,880 acres of cultivated land in Surat, and 25,035 acres in Guzerat, were abandoned under the pressure of the new assessments ; and that in 1874 there was a marked decrease in the revenue collected in the Northern Division of the Presidency, although an increase had been made in the rates ; and a Minute of the Bombay Council records that “ the Government had read with much concern the opinion “ expressed by the Collector of Sholapore as to the undue “ pressure of the revised rates, in consequence of which a “ large quantity of land had been put up for sale in default “ of revenue, much of which found no purchasers.” Notwithstanding these disastrous effects of the oppressive assessments, thus brought to the knowledge of the Government by its own officers, the Authorities remained obdurate, and serious disturbances broke out in the Deccan, where a military force was employed against the people, for the collection of the enhanced tax. This calamitous course continued to be ruthlessly pursued, and evictions became so general that the quantity of arable land abandoned by the cultivators, in the surveyed districts alone, was returned at 2,238,272 acres in the *Bombay Administration Report* for 1877-78.



Meanwhile, a cultivator complained of the assessment on his field exceeding greatly the limit of one-sixth of the gross produce prescribed in a standing Regulation of the Government. The District Judge, who was a Government servant, dismissed the plaint; but the cultivator obtained a decree in his favour on appeal to the High Court; whereupon the Government introduced a Bill in the Legislative Council, removing all revenue cases from the cognizance of the Civil Courts; and the following observation of the member in charge shows the extent to which illegal exactions were being enforced. Sir Barrow Ellis said: "If every man be allowed to question in a Court of Law the incidence of the assessment on his field, the number of cases which might arise is likely to be overwhelming." This Bill was passed in 1875 as the *Bombay Revenue Jurisdiction Act*, and conjointly with similar enactments relating to Northern India, it has deprived millions of British subjects of their Constitutional right of appeal to British Law Courts for redress and protection against illegal and oppressive exactions of the Executive. The enactment of those measures by the Indian Government, it is submitted, was *ultra vires*, seeing that they are in direct conflict with the provisions of Act 104 of 1861 of the British Parliament, by which power has specifically been conferred on the High Courts of India to control and regulate the subordinate tribunals in the Presidencies.

The Land Tax in Bengal was fixed in perpetuity by certain Regulations enacted in 1793, with the express concurrence of the Crown and Parliament of Great Britain; and the effect of that measure on the prosperity of the country is briefly, but fully, stated in the following extract of an official report dated the 22nd June, 1883, and published in the *Gazette of India* in the following October:—"The Bengal of to-day offers a startling contrast to the Bengal of 1793; the wealth and prosperity of the country have

“ marvellously increased—increased beyond all precedent—  
“ under the permanent settlement. A great portion of this  
“ increase is due to the zemindari body as a whole.” These  
beneficial results are the natural effect of the security given  
to private property, and of the confidence which the people  
reposed in the promises and intentions of their rulers.  
Capital and labour were freely bestowed in reclaiming the  
jungle which covered the plains of Bengal; and although  
the tax on land amounted, in 1793, to ten-elevenths of its  
rental—a burden which many proprietors were unable to  
bear, and which caused them to lose their estates under  
the stringent rules adopted for the punctual payment of  
the revenue—agricultural prosperity and national wealth  
steadily increased, opening out valuable and growing  
sources of revenue to the State.

The prosperity, thus created under the protection of the  
Permanent Settlement Regulations, became an object of  
intense cupidity to the new rulers of India; and not only  
sophistry, but also official influence and pressure, were  
industriously employed for obtaining the co-operation of  
Indian officials in a repudiation of the pledges of 1793 and  
the appropriation of the wealth produced under their  
influence. A member of the Council for India, in reply to  
the proposal, said:—“ We have no standing ground in  
“ India except brute force, if we forfeit our character for  
“ truth;” and a high official in Bengal resigned his appoint-  
ment, rather than be a party to the violation of public faith  
so solemnly pledged by the nation.

In spite, however, of the many protests and remonstrances  
received from its own officers, as well as from the public,  
the Government pursued its unfair project and directed  
the Indian Legislature to enact a Bill imposing a small  
additional burden on land in Bengal. This tentative  
measure having led to no popular insurrection, further  
steps were taken in the same direction, and later it was

determined to give full effect to the intended confiscation, through a comprehensive legislative Act, abolishing all existing proprietary rights, and creating a class of middlemen charged with the payment of a scanty annuity to the actual proprietors, and empowered at the same time to rack rent the tenant farmers of the estates. The financial advantage looked for by the Government would then be able to be reaped simply by adequate taxation being imposed on the middlemen—a class who, not being a party to the Permanent Settlement, could not legally claim the exemption to which the proprietors of land in Bengal are entitled under the terms of that compact.

Great ingenuity and no small amount of astuteness characterised the course adopted in the further prosecution of the project. A Bill was at first introduced with the sole avowed object of protecting the rights of tenants and of aiding landlords in the recovery of rent; but it was soon afterwards replaced by a new Bill, on the plea that as the Rent law seemed to need amendment, it was advisable to deal with both subjects in one legislative enactment. This second Bill, at the same time, entirely omitted to provide for the avowed objects of its predecessor, and, after undergoing various alterations, was submitted for the opinions of the High Court and of a number of officials, whose duty it would be to carry out its provisions. The Bill was condemned by all those authorities as being based on a misapprehension of actual facts, as unjust to both the cultivators and proprietors of land, and as impracticable, illegal and iniquitous. Nevertheless, the Bill was passed in March, 1885, as the *Bengal Tenancy Act*, and although ten years have since elapsed, its full execution seems impracticable, and but little progress has been made in the survey, and the Record of rights which is destined to supersede the ancient rights of the proprietors. Meanwhile, the public mind in Bengal remains much disturbed and

subject to a personal prosecution for every act exceeding the limit of his authority.

of estates put up for sale for default of revenue. These sales afford the Government opportunities, of which they constantly avail themselves, for acquiring valuable estates at merely nominal prices.

The following passage in the Preamble of Regulation II. of 1793, will show the direct conflict subsisting between the Regulations of that year (which are still on the statute book) and the Bengal Tenancy Act, and other Indian enactments, empowering Revenue officers to preside as judges in the Law Courts of the country.

“ All questions between Government and the landholders  
“ respecting the assessment and collection of the public  
“ revenue, and disputed claims between the latter and their  
“ ryots have hitherto been cognizable in the Courts of  
“ Maal Adawlut or Revenue Courts. The collectors of  
“ revenue preside in these Courts as judges, and an appeal  
“ lies from their decision to the Board of Revenue, and from  
“ the decrees of that Board to the Governor-General in  
“ Council in the department of revenue. The proprietors  
“ can never consider the privileges which have been conferred  
“ upon them as secure, while the Revenue officers are vested  
“ with those judicial powers. Exclusive of the objections  
“ arising to these Courts, from their irregular, summary, and  
“ often *ex parte* proceedings, and from the collectors being  
“ obliged to suspend their judicial functions whenever they  
“ interfere with their financial duties, it is obvious that, if the  
“ Regulations for assessing and collecting the public  
“ revenue are infringed, the Revenue officers themselves  
“ must be the aggressors, and that individuals who have  
“ been wronged by them in one capacity can never hope to  
“ obtain redress from them in another. Their financial  
“ occupations equally disqualify them for administering the  
“ laws between the proprietors of land and their tenants.

determined to give full effect to the intended confiscation, through a comprehensive legislative Act, abolishing all <sup>of middlemen</sup> desired improvements in agriculture can be expected to be effected. Government must divest itself of the power of infringing in its executive capacity, the rights and privileges which, as exercising the legislative authority, it has conferred on the landholders. The Revenue officers must be deprived of their judicial powers. All financial claims of the public, when disputed under the Regulations, must be subjected to the cognizance of Courts of Judicature superintended by judges who from their official situations and the nature of their trusts, shall not only be wholly uninterested in the result of their decisions, but bound to decide impartially between the public and the proprietors of land, and also between the latter and their tenants. The collectors of the revenue must not only be divested of the power of deciding upon their own acts, but rendered amenable for them to the Courts of Judicature, and collect the public dues, subject to a personal prosecution for every exaction exceeding the amount which they are authorised to demand on behalf of the public, and for every deviation from the Regulations prescribed for the collection of it. No power will then exist in the country by which the rights vested in the landholders by the Regulations can be infringed or the value of landed property affected."

Reverting now to the question as to how India is to be extricated from her perilous situation, and secured from similar dangers in the future, the first step which her recent history suggests is that the arbitrary power, the exercise of which has disorganised her finances and debased the administration of justice, should be abolished; that the legitimate powers of the Indian Secretary of State should be strictly defined, and that the Minister himself should be made practically amenable to a Court of Justice, and be

subject to a personal prosecution for every act exceeding the limit of his authority.

The second step should be to supply a want which has long been felt and is universally acknowledged—the want of a wholesome influence over the Finance. Such an influence can be advantageously exercised only by men personally and permanently interested in the safety of the finances and the welfare of the country—qualifications in which the Secretary of State is manifestly deficient, while subordinate officials would lack the power necessary for the due exercise of the needed influence. In all civilised countries, this influence is exercised, more or less directly, by the taxpayers, who are undoubtedly the body of men permanently and most deeply interested in the safety of the finances and the welfare of the country.

The system of government now followed in India, however, precludes the taxpayers from the exercise of any influence in a matter of such vital importance to them. India has no Parliamentary institution where the wants and feelings of the people can, in a Constitutional and effective manner, be made known to their rulers and legislators—a condition of things which involves serious danger to the State, as all statesmen will doubtless admit. It is true that the Non-Official members of the Indian Legislative Council are theoretically considered to discharge the duties which members of Parliament would fulfil if a Parliament existed. But their insignificant number, and the fact of their being selected by the Government, negative that theory. On the other hand, simply to increase their number, so as to allow them at all times to combine for a majority, might result in rendering the Government powerless for good, and in creating the great peril which arises when the supreme power in a State is vested in a single Popular Assembly.

In nearly every country an Upper House has been found absolutely necessary to prevent the decisions of a Parlia-

ment from being entirely the result of momentary passions and impulses, and to insure their being the conclusion arrived at after mature deliberation and calm reflection.

The task of introducing a fair Parliamentary system in India will, doubtless, be difficult. The establishment of Parliaments in our Colonies presented many difficulties, especially in the Canadian Provinces, where the population consisted of different races, each deeply attached to its traditional institutions, language, and religion. Parliamentary Government, however, rests on principles emanating from the nature of man, and applicable to the wants of communities, irrespective of climate and accidental circumstances. The Parliament of Canada, traced on these principles by Lord Durham in 1837, and subsequently brought into existence, appears to be satisfying the wants and legitimate aspirations of the people, and consolidating the British Dominion in North America. In the general absence of a local aristocracy, a Senate or Upper House had to be formed by Government nominating its members for life; and the rights and functions of the Crown were delegated to the Governor-General, who represents the Sovereign. The varied experiences acquired in our different colonies should, with the country by which the Indian officials, enable us to adapt the "the Regulations can be in the wants and circumstances of "property affected." falling into the many errors

Reverting now to the execution of tentative measures. extricated from her perilously acquainted with India, it will similar dangers in the future extend the franchise only to recent history suggests is and and value the gift, and to exercise of which has disorg of a Representative system of the administration of justice same time, a method should be legitimate powers of the In the proportion between the power be strictly defined, and that and the financial burden which he made practically amenable to and dangers which have arisen

in other countries from a neglect of the principle involved, may perhaps be lessened, if not entirely avoided, by the application of that principle to India.

Sir Auckland Colvin, in his very instructive Article mentioned previously, lays particular stress on the fact that "the root of our financial difficulties in India is the insufficient check exercised by the Financial Department"; and Sir David Barbour, in his remarkable speech at the International Bimetallic Conference last spring, said: "The system of government in India is favourable to increase of expenditure and unfavourable to reduction of expenditure." In short, there is a general consensus of opinion that the evil from which India is suffering, can be remedied only by a wholesome influence being created, to control the administration of her finances. Sir Auckland Colvin does not believe that "the time has come when the Indian expenditure can be controlled by an Indian Parliament"; and looks for a remedy to the Finance Minister exercising more influence in the Council of the Governor-General of India. It should, however, be remembered that the decisions of that Council are not final, but may be reversed by the Secretary of State, that is, by the very official who, disregarding the remonstrances of the Finance Minister and the Law member of the Viceroy's Council, insisted on adopting the increased scale of Military expenditure initiated in 1885, from which the existing financial difficulties of India have arisen.

J. DACOSTA.



### III.—THE MATRIMONIAL CAUSES ACTS, AND ACCESS TO CHILDREN BY DIVORCED PARENTS.

THE question whether or no a divorced parent should be permitted access to his or her infant children is one of extreme importance; and one for which, I venture to think, the English Law provides a mode of solution not altogether satisfactory.

By the Matrimonial Causes Act of 1857, the Court is empowered to make such provision in the final decree in a divorce suit, as it may deem just and proper, with respect to the custody of the children; and the Matrimonial Causes Act of 1859, recognising that such orders are, by their very nature, temporary and requiring to be altered with any change of circumstance, has widened these powers, and has enabled the Court, upon application, to make orders as to the custody of the children *after* the final decree.

These statutes, then, give the Court the very widest discretion in dealing with the infant children of dissolved marriages; and, so far as the actual "custody" of the children is concerned, no one can cavil at the course adopted by the Legislature; for "custody" is a matter which can only be decided by the Judge in accordance with the exigencies of individual cases. But in deciding upon "custody," it need hardly be said, the Court has also to decide whether the divorced, and therefore (usually, though not invariably) "non-chosen" parent shall be allowed access to the children, either immediately after the final decree, or at any subsequent period.

But is this a question that should be left to Judicial discretion? I venture to think not.

In the first place—as the cases shew—the Courts of first and second instance exercise their discretion with considerable severity; and it comes to this, that, in the absence of very exceptional circumstances, it is exceedingly difficult for a divorced father, and still more difficult for a divorced mother, ever again to get access to his, or her, infant children—and this, too, however blameless the wrongdoer's subsequent life may be.

Of course, a continuance of that immorality which led to the divorce should operate as an effectual bar to any access, and the Court would be justified in repulsing, with very strong observations, any respondent who, at the date of the petition, was, for instance, still living in adultery. But the petitioning respondent who is usually repulsed is one who has made some expiation for the past offence by a period of blameless life; and the question which must present itself on every such occasion is this:—Are the inferior Courts justified in using their discretion in the way in which they use it?

The House of Lords in the case of *Symington v. Symington* (2 H.L., Scotch App. 415) has given a precedent for very much greater leniency; and the Judgments of their Lordships contain almost unanswerable reasons for such a course. The case cited was a husband's appeal against the Judgment of the First Division of the Court of Session, Scotland, whereby he had been found guilty of adultery under peculiarly base circumstances, and had been ordered to separate himself from his wife "in all time coming": she being further granted alimony and custody of the children during their respective pupillarities.

The House of Lords found that the appellant had been guilty of adultery, and therefore upheld the decree; but it reversed the decision of the Court below as to the custody of the children, and committed the sons to the father and

the daughters to the mother. In giving Judgment, Earl Cairns, L.H.C., said :

“ Grave as the offence in this case was, there appears to  
 “ be no continuance of immorality. It is proved that the  
 “ husband is affectionately attached to the children and  
 “ has always been so. He is engaged in a profitable  
 “ business. I cannot perceive that an order which should  
 “ take from him the custody of his sons would be conducive  
 “ to their future welfare. . . . On both sides there  
 “ ought to be a careful opportunity of access, so that none  
 “ of the children may grow up without as full knowledge,  
 “ and as full intercourse as the case will admit of, with both  
 “ parents, in the hope that a curtain of oblivion will be  
 “ drawn over all that has occurred.”

Lord Neaves was even more emphatic. “ If we take a  
 “ man’s children from him,” said his Lordship, “ we  
 “ leave him a solitary being, and deprive him of the most  
 “ powerful inducement to amendment of life. It is not  
 “ that he has committed faults, but that he teaches, or is  
 “ likely to teach, evil to them, and to corrupt their morals,  
 “ that can alone entitle us to interfere.”

In the face of such humane and wise utterances as these, coming from so high a Judicial source, how can it fairly be maintained that the Judges of inferior tribunals have no choice but to keep shut the narrow road by which a wrongdoer may hope to recover some fragments of that of which a single false step, possibly bitterly regretted, may have deprived him ?

But it may be contended that *Symington v. Symington* deals with a divorced father, and that, had the guilty party been the wife, a very different decision would have been come to. Granting that adultery in a woman is very much more heinous than in a man, yet it can hardly be urged that the guilty wife should be denied “ the most powerful inducement to amendment of life,” which is given to the

husband; or that, because she is a woman, she is more "likely to teach evil to her children and to corrupt their morals;" or, lastly, that "a curtain of oblivion" is to be drawn only over such unhappy conjugal pasts as contain the husband's lapses from the duties of married life.

Another objection to the conclusions drawn in the present Article from the case of *Symington v. Symington* may be made on the ground that the father had a profitable business, and that the House of Lords clearly felt that his sons would suffer in their material prospects were they to be removed from his custody. The explicit language of the various Judgments renders it idle to contend that this was the sole reason for the decision.

That the advantage of the children—material or moral—should be the decisive factor in these cases, is right enough; and this, incidentally, is one of the reasons why it is usually much easier for a divorced father to keep up intercourse with the children than it is for a divorced mother.

But this doctrine may be pushed too far. The divorced father may be, for instance, at the head of a very lucrative business. Although his crime was of the blackest description, yet his petition for custody will have a better chance of success than that of the father whose fault was of a much more pardonable character, but who cannot offer his children the like material advantages.

Besides, even if the possession of influence, or wealth, or a lucrative business may be justly held sufficient to incline the Courts to give a man custody of his sons, where he would not otherwise have had such custody; yet the advantages of the children, which must be looked to in considering "access," are of a very different kind.

Here the question is of a much more subtle order. The Court has to ask itself whether or no it is to the interest of the children to be cut off altogether from intercourse with their erring parent, and to be brought up in the belief that

he or she is dead. But it may be doubted whether such a course of absolute obliteration is, generally speaking, even possible—it would require that the offence and the consequent separation should have taken place before the children had reached an age of understanding; and even then the gossip of neighbours or servants, if not their own minds, will lead them to ask significant questions, and think out distorted shapes of the truth for answers. However guarded such a household, however circumscribed its topics of conversation, the secret will find a means of entry, and come between the guardian parent and his children—endowing every burst of childish discontent with a character of unnatural bitterness, and rendering any interval of silence ominously significant. At the same time, the fault of the absent parent is exaggerated and magnified; the unremembered personality takes shape in the infant brain; and the shape is usually a very terrible one.

A set of papers, in a petition for access presented as long ago as 1880, is lying before me now. They contain a passage which will illustrate my meaning. A little girl of ten was asked whether she would know her mother were she to see her. "Yes," she answered, timidly; "but I should be afraid of her."

We mortals are always ready to magnify the harm done to us by those nearest and dearest; the children go out into the world, and, in all likelihood, meet with their fair share of the knocks and disappointments which the world distributes so impartially. What is the result?

They put it down to their unhappy circumstances; and deem themselves handicapped by the offence of one parent, and possibly the selfishness of both.

Let us look, for a moment, at the other side of the picture. The Court permits the erring, but repentant, parent to retain whatsoever control an intercourse of, say, two hours per month can give. The children, at least, will

now know the extent of the damage. Instead of the sinister, unseen figure, built up by brooding and rumour, to darken their lives and maim their enterprises, they discover that the divorced parent is a person of ordinary human weakness, though, perhaps, of more than ordinary human folly; and they learn that Society,—in its widest sense,—however severely it is bound to punish lapses from the marriage pact, yet does not deny a measure of rehabilitation to those who give the truest sign of repentance,—to wit, a reformation of life, or, at least, discontinuance of the adultery or immorality which formed the ground for the divorce. Above all, they will find that in the main, public opinion is just and fair-minded, and that no man ever suffers in his chances of worldly success, or in the opinion of his neighbour because of his father's sins; and that, as a matter of fact, he will gain greatly in the estimation of his friends if he proves himself a loving sympathiser for one who has undoubtedly wronged him, instead of permitting himself to be sequestered for ever from one of the authors of his being. Yet, such life-long sequestration is the only natural result of keeping infant children entirely apart from their divorced parents.

Turning, lastly, to the principles of abstract Justice. Is the punishment to be never ending? Public life affords innumerable instances of men, who, having offended, are allowed a fresh start in life. Our private circles of acquaintance may supply us with many more. And it would indeed be a terrible thing if it were not so.

But it may be urged, and with considerable force, that the offences which render a person liable to be divorced are such that the culprit is rightly condemned to lose his children's society for the years which may intervene between the divorce and their majority. And furthermore, that, without such a penalty, a powerful deterrent to desertion, and cruelty, and even adultery, would be removed.

Granting this, for argument's sake, let us have this penalty embodied in a specific statute. At present it depends not on definite legislation, but on Judicial discretion; and, as drowning men proverbially catch at straws, this penalty cannot possibly be the deterrent which its advocates contend that it is.

But if the penalty were embodied in a specific statute—would such a law be, ethically speaking, a just one? Examples drawn from foreign countries are always dangerous, especially when one is dealing with questions of abstract principle; but I cannot refrain from quoting what the “Code Napoléon” has to say upon this subject:—

“Quelle que soit la personne à laquelle les enfants seront confiés, les père et mère conserveront respectivement le droit de surveiller l'entretien et l'éducation de leurs enfants, et seront tenus d'y contribuer à proportion de leurs facultés.” (Bk. I., Tit. vi., c. iv., sec. 303.)

Contrast this with the rule in the case of *Handley v. Handley* (L.R. [1891] P.D. 124):—

“Where a decree for dissolution has been made on the ground of the adultery of the wife, and the infant children of the marriage have been given into the custody of the husband, the Court is not precluded from making an order giving the divorced wife access to them, but as a general rule such an order will not be made.”

Which of these two modes of treatment is the right one? Surely the former, and it is also the more merciful. Who can read the *dicta* in *Symington v. Symington* and yet say otherwise?

The following passages from M. Laurent's valuable commentary on the “Code Napoléon” seem to me to help my argument.

In one place, he says:—

“Des enfants sont nés du mariage; le fait de leur conception pendant le mariage leur a donné la légitimité,

“le divorce ne peut la leur enlever ; ils conservent donc  
 “tous les droits des enfants légitimes contre leurs parents  
 “divorcés, le droit d’éducation, le droit aux aliments, le  
 “droit de succession. Par la même raison, les parents  
 “divorcés conservent la puissance paternelle sur leurs  
 “enfants, car ils ne cessent pas d’être père et mère.”

And again :—

“On demande si l’époux contre lequel le divorce est  
 “prononcé perd la puissance paternelle. Nous sommes  
 “étonné de lire dans *Zachariae* que cet époux est considéré  
 “comme mort ; que, par suite, l’époux qui a obtenu le  
 “divorce prend la tutelle des enfants. Comment l’époux  
 “coupable serait-il considéré comme mort, alors que la loi  
 “permet de lui confier les enfants ? Et s’il était mort, la loi  
 “pourrait-elle dire qu’il conserve le droit de surveiller  
 “leur entretien et leur éducation ? . . . il faudrait  
 “un texte plus que formel pour que l’époux coupable fut  
 “considéré comme mort, alors qu’en réalité il vit et que la  
 “loi lui reconnaît des droits sur l’éducation de ses enfants”  
 —as the Law does in this country, provided he have a  
 profitable business.

And this brings me to the main purpose of my Paper. I venture to think that the right course is a middle one between the mildness of French Law and the severity of our own. I would suggest a statute embodying provisions limiting the cessation of intercourse between divorced parents and infant children to a period not exceeding two years from the date of the final decree. The Court, of course, must feel satisfied that the petitioning respondent is leading a blameless life, at any rate at the date of the petition, and any return to immorality subsequent to access being granted, should be sufficient grounds for its revocation.

C. B.



#### IV.—STATE LABORATORIES AND THE FOOD PRODUCTS (ADULTERATION) COMMITTEE.

**T**HERE are many reasons why the deliberations of the Select Committee of the House of Commons, which sat last Spring and is to sit again in the coming session, to inquire into the adulteration of Food Products, will be of immense public interest. Any tampering with the purity of an article of food or drink affects first of all the public health, one of the first cares of the State. Secondly, its effect is economic. The state of Agriculture in this country imperatively demands that the producers in the British Isles may be allowed, if it be possible, to supply the demands of their countrymen. The question is being considered by the Royal Commission on Agriculture, but it is one which equally concerns the Food Products Committee. If the foreigner can place upon the market a pure and wholesome food cheaper than the home farmer, then there is no cure by legislation, Thrift and Science are the only weapons; but if it be true, and we believe it is, that the victory of foreigners in our markets is largely due to systematic adulteration and sophistication, then the Food Products Committee have it in their power to stamp out those forms of abuse, which science has already discovered, and perhaps thereby help to bring prosperity to the tenant farmer. It is not within the range of practical legislation to solve these questions once and for all, since the ingenuity of man in these days of invention will discover new methods of adulteration and fraud, only to be dealt with from time to time by new statutes. A third reference to the Committee, and part of which the present writer purposes to consider in this Paper, is the administration and procedure under the existing Adulteration laws. The

Food and Drugs Acts have given rise to a proportionally large number of cases stated for the opinion of the High Court, and after the 20 years of trial, it has become apparent that there should be new legislation, not only to ensure an equality of justice, for the convictions are very anomalous, but also to simplify, improve, and economise the administration and procedure under these Acts.

There are in the British Isles many classes of officials directly concerned with the inspection, analysis, and general care of what is intended or exposed for sale, sold, or imported for the drink and food of man. And indirectly the Legislature protects the public as purchasers of these articles by means of various enactments (a) connected with the healthy maintenance and good order of bakeries, dairies, markets and slaughterhouses, (b) concerning the sale of horse flesh, the carrying on of noxious trades, the pollution of streams and the manufacture of beer and spirits, in each case appointing officials to carry out the provisions of these statutes. Sometimes the primary objects of such legislation may be concerned with the duty which the State feels towards the employed or with the exigencies of State finance, but in all there is a secondary feature, with a view to which each law is in part framed, or which may arise as an unpremeditated consequence of the passing of such a law. Entirely distinct from all these statutes, usually classed as "Public Health" enactments, are those protecting the purchaser from fraud arising in the weighing and measuring of any article, or from imposition by the use of false trade descriptions and marks. Under the former of these Acts a number of official Inspectors are appointed by the Local Authority, and under the Merchandise Marks Acts of 1887, 1891 and 1894, the Boards of Trade and Agriculture are empowered to prosecute, where the public weal is at stake; there is, of course, nothing to prevent the

Customs officers from making use of these enactments at the port of entry. The "Public Health Acts," actually so called, codified the offences relating to the sale of unsound food, and for their administration two classes of officials were called into existence. The Public Health Acts authorised the Urban, Rural, and Port Authorities to appoint Medical Officers of Health and Inspectors of Nuisances, whose duties have been minutely defined and laid down by Orders of the Local Government Board.\* The Urban Authority may be either a Municipal Borough Council acting by virtue of the Local Government Act, 1894,† as an "Urban District Council," or an "Urban District Council," not a Borough Council. The Rural Authority will henceforth be the "Rural District Council."‡ The Local Government Act, 1888, in confirming this system of decentralisation, also gave power to County Councils to appoint their own Medical Officer of Health; and it further enacted, subject to special leave to be obtained from the Local Government Board, that certain qualifications were necessary for anyone to hold the office of Medical Officer of Health in any county or county district. These qualifications are such as enable him to practice medicine and surgery, and where the population exceeds 50,000, an additional special diploma in Public Health is required.§ That special diploma is now only granted according to the Regulations of

\* These Orders bear date 23rd March, 1891.

† 57 & 58 Vict., c. 73, § 17.

‡ The following are the sections of the Public Health Act, 1875, authorising these bodies to appoint :—

§ 189, "Every Urban Authority shall from time to time appoint fit and proper persons," to be the medical officer of health . . . .  
inspector of nuisances. . . . .

§ 190 (the same as regards the Rural Authority).

§ Local Government Act, 1888 (51 & 52 Vict., c. 41, § 18).

the General Medical Council issued in 1889. The next class of officials came into existence by virtue of the Adulteration Acts, and they are of two kinds. There are the persons putting the Acts into motion by taking or buying samples, who may be any of those classes enumerated in the several different sections of those Acts.\* The second set of officials are the analysts, upon whose certificates the prosecutions are undertaken. The samples to be examined prior to any prosecution are handed to the Public Analysts appointed under the several sections of the Adulteration Acts,† subject to the amendment of the Local Government Act of 1888.† Their certificate is *prima facie* evidence, but may be attacked by the defence.

\* 38 & 39 Vict., c. 63, § 13, "Any medical officer of health, inspector of nuisances, or inspector of weights and measures, or any inspector of a market, or any police constable under the direction or at the cost of the local authority appointing such officer, inspector or constable, or charged with the execution of the Act, may procure any sample of food or drugs. . . ." Any of these officials may employ a deputy (*Horder v. Scott*, L.R. 5 Q.B.D. 552), 42 & 43 Vict., c. 30, § 3. These officers above-mentioned may procure a sample of milk at any place in the course of delivery of the milk.

† "In the city of London and the liberties thereof, the Commissioners of Sewers of the city of London and the liberties thereof, and in all other parts of the metropolis, the vestries and district boards acting in execution of the Act for the better local management of the metropolis, the court of quarter sessions of every county, and the town council of every borough having a separate court of quarter sessions, or having under any general or local Act of Parliament or otherwise a separate police establishment, may . . . and shall . . . appoint one or more persons possessing competent knowledge, skill and experience, as analysts of all articles of food and drugs sold within the said city, etc. . . . but such appointments . . . shall . . . be subject to the approval of the Local Government Board . . . ." (38 & 39 Vict., c. 63, § 10.)

‡ § 3. "There shall be transferred to the council of each county, on and after the appointed day, the administrative business of the justices of the county in quarter sessions assembled; that is to say, all business done by the quarter

It is in the discretion of the Magistrate to have the sample also analysed by the Chemical Officers of the

sessions, or any committee appointed by the quarter sessions, in respect of the several matters following, namely:—

(ix.) The tables of fees to be taken by and the costs to be allowed to any inspector, analyst, or person holding any office in the county. . . .

(x.) The appointment, removal and determination of salaries of the . . . public analysts . . . .

§ 34. (c.) Such powers, duties, and liabilities of the court of quarter sessions or justices, as in the case of a county are transferred to the county council, shall be transferred to the council of the county borough, whether the same are vested in or attached to the court of quarter sessions, or justices of the borough, or of the county in which the borough is situate: . . . .

§ 35. In the case of a quarter sessions borough (not being one of the boroughs named in the Third schedule to this Act) but containing, according to the census of 1881, a population of 10,000 or upwards, the following provisions shall, on and after the appointed day, apply:—

(1.) Nothing in this Act shall transfer to the county council any power of the council of the borough as local authority under any Act, or (save as in this Act expressly mentioned) alter the powers, duties, liabilities of the council of the borough under the Municipal Corporations Act, 1882, but subject to the above provisions and to the savings hereinafter contained, the borough shall form part of the county for the purposes of this Act. . . .

§ 38. Where a borough having a separate court of quarter sessions contained, according to the census of 1881, a population of less than 10,000, the following provisions shall after the appointed day apply:—

(2.) There shall be transferred to the county council the powers, duties, and liabilities of the council of the borough—

(b.) as regards the appointment of analysts under the Acts relating to the sale of food and drugs.\*

§ 39. Where a borough, whether with or without a separate court of quarter sessions, contained, according to the census of 1881, a population of less than 10,000, then . . . . all powers, duties, and liabilities of the mayor, aldermen, and burgesses, or council of the borough, or the watch committee of the borough in relation—

(b.) to the appointment of analysts under the Acts relating to the sale of foods and drugs† . . . . shall cease."

\* Analysts had up to this time been appointed by the councils of these boroughs under the Food and Drugs Act, 1875. By this section, this power as regards these smaller Borough Councils passes, subject to the provisos above, to the County Council.

† In boroughs not having any Quarter Sessions, there was power where there was a separate police force to appoint Analysts: the power ceases by this enactment.

Inland Revenue,\* but the results of this analysis are in no way binding upon the Magistrate, and the Somerset House Laboratory is not, therefore, one of appeal. Under the Agricultural Fertilizers and Feeding Stuffs Act, 1894,† a different system is in vogue. The Local Authority, that is a County Council, or a County Borough, may appoint the District Analyst, whose certificate is *prima facie* evidence; in case of dispute there is an Official Analyst of Appeal appointed by the Board of Agriculture, whose certificate may also be attacked by the defence, if the defence call the Analyst of Appeal. Under this Act, therefore, there is for the first time something in the nature of a district judicial system for analyses. There is also an Official Analyst apart from all these, appointed by any Court of Summary Jurisdiction, which Court may, under sect. 70 of the Public Health Act of 1875, if they see fit, cause any water complained of to be analysed at the cost of the Local Authority applying to them under that section. The Court will no doubt select the Public Analyst of the district, but is not compelled to do so. Again, there are the Inland Revenue and Customs Analysts and Inspectors appointed by and under the control of the respective Commissioners, who have their own Laboratories. Their first duties are to prevent any fraud against the Revenue of the State, but almost equal in importance is their power to prevent the importation of adulterated and prohibited articles

\* "The justices before whom any complaint may be made or the Court before whom any appeal may be heard, . . . may, upon the request of either party, in their discretion, cause any article of food or drug to be sent to the Commissioners of Inland Revenue, who shall thereupon direct the chemical officers of their department, . . . to make the analysis, and give a certificate to such justices of the result of the analysis." (38 & 39 Vict., c. 63, § 22.)

† 56 & 57 Vict., c. 56.

ard to see to the proper manufacture of certain classes of goods. These Inspectors may condemn, seize, or destroy particular kinds of merchandise under certain conditions, but under others the condemnation or destruction is dependent upon the Analyst's evidence. Under the many Acts to which we have already alluded where the primary objects are, like Revenue Statutes, for other purposes than protecting the consumer concerning his food and drink, there are employed a host of Inspectors to see that they are properly administered.

What the Inland Revenue Commissioners require as the qualifications of their Analysts we do not know. But we were lately told the nature of the qualifications expected of an Analyst whose appointment was submitted to them for their sanction under the Food and Drugs or Margarine Acts, when an official of the Local Government Board was examined before the Adulteration of Food Products Committee, 1894. The following is an extract from his evidence :—

“ Q. 194. Now, as to the qualification of the Analyst, can you give us any information as to what you require, and to whom the certificates are obtained from as to the qualification?—A. No, no special requirement has been laid down, but I may say that although the Sale of Food and Drugs Act does not prescribe any special qualification for the Analyst, yet the Local Government Board have acted as if the requirement of the Act of 1872 was still in force, which provides specifically ‘that public Analysts shall be possessed of chemical, medical, and microscopical knowledge;’ and the Board have expressed an opinion that the following is the evidence which local authorities may properly require as to the candidate for the office referred to possessing the requisite qualifications: (1) Medical Knowledge. Proof that the applicant is registered under the Medical Acts

to practice as a medical man, or in default of this, proof that he has made a special study of the influence of adulterations on health. (2) Chemical Knowledge. The production of diplomas or certificates given in respect of such knowledge or evidence that the applicant has been engaged and is proficient in chemical research. The following may be accepted as proofs of chemical knowledge : (a) To have published good matter on chemical subjects ; (b) to have practised reputably as a chemist ; (c) to have worked in a chemical laboratory as assistant for a sufficient length of time and at sufficiently refined work : (d) to have good certificates which will stand the test of inquiry ; and (e) to have passed some of the higher examinations, especially of late years. Then, with regard to microscopical knowledge, proof that the applicant has been engaged in microscopical investigations and is proficient in the use of the microscope. This is, generally speaking, what is required."

Comparing, then, this system with those of other countries, we find that in France, in the year 1790, the watching over the sale of wholesome provisions by good weight and measure was placed in the hands of the Local Police, Municipal or Rural, and in the following year their duties were extended to the supervision of the retail of these articles in *cafés* and other public places, the local authorities being empowered to appoint, as Commissaries of Police, experts in the examination of provisions and drugs. These administrative arrangements were re-enacted in 1884, when the Municipal or Rural Police were made subject to the control of the Mayor of the Commune, but under the supreme control of the Prefect of the Department, who has power to carry out any measure which he may deem necessary for the health of any *commune*, when such *commune* fails to take proper measures. In Paris, the Prefect of Police assumes the absolute control of the Municipal Police. The



Communal Council and its Mayor seem to correspond to our Parish and District Councils, and the Council of the *Département* to our County Council, but the systems of Local Government, so widely different, perhaps do not admit of comparison. Whereas, in England, the Local Government Board has been evolved by the local institutions, in France, every authority is an organ of one great centralized body, synonymous with the name of Paris. That the former system has the disadvantages and drawbacks of decentralization, although immensely inferior to those of a too great centralization is only too evident to the student of comparative Local Government. Local Government which is not political is everywhere in England the most efficient, the voice of the Central Authority is more often than not the voice of the politician; has not one of the evils of Irish Government always been considered as due to an over-centralization? In Paris, the Prefect of Police, acting as does the Mayor in other Municipalities, under the laws we have already quoted, whereby the sale of wholesome provisions is the special care of the Municipal Police, has established a Laboratory, which has been working since October, 1878, and been open to the public since 1881. As each sample is brought to the Laboratory, a clerk records in a day-book the nature of the sample, the date, the name of the *dépôt* from which it comes, the name and address of the person who brings it, and the name and address of the sender. From this day-book the clerk tears off a check, on which he writes the same particulars and also the date when the complainant is to call again. There are 20 expert-inspectors, of whom 10 are Police-commissaries, and they divide among them for inspection the districts of Paris. They visit all markets, shops and suchlike places, taking samples, and, where they discover any foods undoubtedly bad, destroy them there and then; when they take a sample away, they

draw up a minute\* on the spot, and divide such sample in two; it is then initialed and sealed by the owner and Inspector. One portion of the sample goes to the Municipal Laboratory, and the other is kept at the Police *Dépôt* in case any difficulty arises. We noticed that when the sample was first taken to the Laboratory, certain entries were made in the day-book, and besides the check given to the depositor, another check is taken off the counterfoil and is attached to the sample; on this check is written merely the number of the sample and its nature.

In the Laboratory itself the analysts are divided into classes, and each class performs only its own special branch of work. Thus some are tasters, others milk analysts, and so forth. The result of the analysis is recorded on a

	<i>République Française.</i>
* <i>Prefecture of Police.</i>	The      day of                      we, the Commissary of Police
<i>Central Office.</i>	and              Expert Inspectors attached to the Chemical
<i>Chemical Laboratory.</i>	Laboratory of the Prefecture of Police paid a visit in
<i>No. of sample, .</i>	accordance with instructions to                      ,
<i>No. of report, .</i>	residing at                      , and having announced
—	the object of our visit, we examined the articles offered
<i>Minute of the      day</i>	for sale and took samples as follows :—
<i>of      .</i>	(Nature, etc., of samples.)
<i>Sample seized the</i>	In the presence of M.                      we divided the samples
<i>day of      ,</i>	in 2 parts, and we enclosed and sealed them in
<i>At Mr.      ,</i>	by M.                      , with labels bearing the number                      , signed
<i>residing at</i>	and ourselves. M.                      answered
	all our questions.
	(Here follow names, etc., of person visited.)
<i>Paris, .</i>	
<i>Paris, the      day</i>	
<i>of      .</i>	

We have drawn up this minute to be forwarded to the Prefect of Police, and it has been signed (or not, as the case may be) by M.\* after reading it.

*Signature of person visited.*

*Signature of Inspectors*

regulation form, and is attached to the original check on the sample and re-forwarded to the office of the Laboratory. When the depositor of the sample is not an Inspector, these two papers are attached to the original record and forwarded to the complainant. When the analysis is of a sample seized by the Inspector, it is copied in duplicate, and one copy forwarded to the Ministry of the Interior (our Home Office). The public have a right to ask for either a qualitative analysis, for which they pay nothing, or a quantitative, the tariff of which varies.

There is still in force in France a law of the First Republic (22 Germinal, An XI.) by which the Government may establish Committees of *savants*, Chambers of Commerce, etc., whose duty it is to study any questions concerning public health and adulteration of food put before them by the Minister in office. In 1884 a Central Committee of Public Health, sitting in Paris, was constituted, which absorbed the functions of a consulting body concerned with the Municipal and Departmental Laboratories. This body does not take any active part in the administration of the law, it is merely advisory; it draws up minutes, and perhaps drafts Bills to be laid before the Council of State. Some of its functions are to advise as to :—

(1) The duties of the Police in regard to Medical and Pharmaceutical matters.

(2) To indicate to the Government upon what questions the advice of the Academy of Medicine should be sought.

(3) To advise as to the quality of foods and drinks.

(4) To advise upon the reports from the Departmental and Municipal Laboratories or authorities.

(5) To report upon the methods of analysis to be used.

(6) To report generally upon all technical matters. Besides this consulting committee of Public Health, there exist, in each *arrondissement*, committees of Public Health, who advise the local authorities. The *arrondissement*,

presided over by the Sub-prefect, and the Council of the *Arrondissement*, are in no way comparable to our District Council, the Sub-prefect being chiefly an adjutant to the Prefect and the Council, a deliberating and advising body. By many it is considered a useless portion of French local administration.

When a prosecution is instituted in regard to the adulteration of any article, the defence may of course attack the Public Analyst's certificate, and give evidence of their own to support their view. The Court may order a special analysis to be made by any person it may select. The legal theory in regard to experts in France is that the results of the expert's experiment should be presented in such a way as to enable the defence to discuss the deductions from the set of facts which the expert chemist proves. Thus, it has been held that the Court ought to adjourn the case for the results of further experiments, where it is manifest that the facts certified do not sufficiently uphold the conclusion pleaded for by the prosecution. The whole function of the chemist-expert was well discussed in a case at Montpellier (March 20th, 1891), where the chemist refused to give evidence as to his method of analysis. As regards Customs and Imports the procedure is different, for there exists a list of chemists selected by the Government, who report upon any import in consultation with a commercial man appointed by the Customs and another appointed by the defence. Where the two commercial men disagree, the decision of the Government chemist-expert is final.

Under the French Fertilizers Act of 1888, by a supplementary decree of 1889, where a sample of manure is taken by agreement between the parties, the parties may mutually agree upon a chemist-expert, chosen from a list drawn up by the Government; but where an official samples, the chemist is chosen by the local authority. If now the

vendor disputes the certificate of the chemist, the Judge of the tribunal before whom the prosecution takes place selects another expert from the same list. His certificate may be attacked, but the Courts will regard it rather in the nature of a certificate of appeal, and the reading of the facts, which he proves, would probably be the point to which discussion would be directed. Under the Act the methods of analysis are laid down by decree.

In Belgium a different system is in vogue. In that country there are State Laboratories and Civil Laboratories over which the State exercises control, and which do the Government work. The State Laboratories are under the control of a Central Board, who likewise inspect the affiliated Laboratories. This Central Board meets and examines into any questions brought before it by the Government of the day, and its duties are also to (1) consider agreements between the Trade and the Manufacturer; (2) regulate the tariff for analysis; (3) select provincial non-State Laboratories for affiliation. Each State Laboratory is under the control of five delegates, one of whom is nominated by the Central Board, one by the Central Medical Board, one by the Provincial Chamber of Agriculture, and two by the Government. The Director and staff are selected for four years, and the highest salary varies from £140 to £180 a year, inclusive of allowances. The affiliated Laboratories are subjected to periodical inspections, and must be fitted up with apparatus as detailed in the Government order of 23rd June, 1891. These Laboratories, State and affiliated, have to analyse all food, drinks, drugs, manures, feeding stuffs for cattle, and agricultural produce. The tariff of prices, unless there is a special contract, as is allowed in the cases of Communes, is fixed by a decree of 23rd June, 1891. .

Generally speaking the calculation of a density costs 10d., any simple analysis is 8d., any rather difficult

one 4s. 2d., and a minute bacteriological microscopic examination 16s. 8d.

Another example of an entirely different system may be taken from the evidence given by one of the witnesses before the Parliamentary Committee of 1894, who brought to the notice of the members the Dairy Bureau, as it exists in the State of Massachusetts, U.S.A.

"In the State of Massachusetts a law creating a Dairy Bureau went into effect on the 1st September, 1891. According to the provisions of this law, the bureau in question is placed under the control and direction of the State Board of Agriculture, and its particular duties are defined as follows:—To investigate all dairy products and imitation dairy products bought or sold within the Commonwealth. To enforce all laws for the manufacture, transfer or sale of all dairy products, and all imitation dairy products within the Commonwealth, with all powers needed for the same. To investigate all methods of butter and cheese making in cheese factories or creameries, and to disseminate such information as shall be of service in producing a more uniform dairy product of higher grade and better quality. The law gives the bureau authority to enforce all the laws relating to dairy products; but up to the present it has been only able to deal with the regulations respecting oleomargarine. These regulations are briefly as follows:—(1) Requirements for branding boxes and tubs, and for marking wrapping-paper, with a penalty for false marking or branding; (2) a prohibition of the use of the word 'dairy' or 'creamery' on any tub or package; (3) a requirement for licensing dealers and conveyors; (4) a penalty for selling oleomargarine as butter; (5) requirements for signs on stores and waggons; (6) a prohibition of its sale at hotels and restaurants without notice; (7) a prohibition of the sale of any imitation of yellow butter. It appears from the 'Report of the Dairy

Bureau of the Massachusetts Board of Agriculture for the year 1892,' that, in enforcing these laws, the greatest number of actions that have been brought by the bureau have been against sellers of an imitation of yellow butter. All these actions have been stubbornly contested. Notwithstanding the opposition that has been encountered, the legislation under which the bureau has acted has apparently been of much value in preventing dishonest practices and in restricting the sale of oleomargarine, which compound has been characterised by the Supreme Court of Massachusetts as a deceptive substance, and one designedly made for the purpose of being passed off for something different from what it is. The bureau also pays great attention to the milk supply, and works in harmony with the boards of health and the milk inspectors in the various cities of the State."

From the evidence given before the Committee of the House of Commons in the Spring of last year, and issued in an *interim* report in 1894, it appears that the systems in the United Kingdom, under which samples are taken, analyses are checked and the statutory arrangements in regard to the Analysts' evidence, are alike unsatisfactory. So far as the Inspectors of Nuisances and Medical Officers of Health are concerned, it is believed that the Local Authorities as a whole find the Public Health Acts workable, but in the case of the Adulteration Acts there is much that might be improved. In the first place it is asserted that the local Inspectors are too well known in their districts, and that consequently it is sometimes impossible for them to procure samples of the adulterated articles known to be supplied to the public; in the second place, it is to be presumed by the examination of the quarterly returns that some districts are far more closely worked by their Inspectors than others, that consequently the Local Authorities are perhaps often largely composed of the very men who retail the various kinds of foods and drugs. Not only do the Food and

Drugs and Margarine Acts hit the dishonest, but also the honest tradesmen; these latter can only protect themselves by obtaining a warranty with each consignment of merchandise. The Courts have luckily only allowed the retailer to escape punishment where he can produce a full and clear statement from the wholesale merchant who supplied him with the goods actually sold as pure.

It can be readily imagined that the most honest tradesman who is prosecuted for selling a bad article, even although he is perfectly innocent, dislikes not only the process and expense of having to prove his honesty, but that he shuns still more the public exposure of a prosecution, which must ultimately do his trade a permanent injury. It would be more than human to expect Borough Councils, composed of these tradesmen, to leave no stone unturned to discover and punish adulteration in all its varied forms by actively enforcing the Inspectors' duties. Nowhere has it been asserted that the Local Authorities have not appointed efficient Inspectors, or that the Inspectors have failed in their duties, and witnesses examined before the Committee have suggested that these difficulties may be removed by the employment of Travelling Inspectors under the direction of the Local Government Board. These officials would be sent to any particular district which the Local Government Board might suspect of being insufficiently worked, and the cost so incurred would fall upon the Local Authority.

Then as to the analytic system. The appointments are good, the Analysts are everywhere considered efficient and thoroughly able to carry out their duties, but it is urged that the statutory form of their evidence is not satisfactory. In the first place their certificate is not received exactly on the footing of expert evidence; it is merely to testify to facts where the case is not one of adulteration, and where it is a case of adulteration the Analyst is only



permitted to record certain observations as laid down in a note to the certificate. An observation of fact other than these renders the certificate invalid.\*

When called as witnesses, they may, of course, give any evidence which the prosecution or defence desires. As the Local Government Board or Board of Agriculture issue no legal regulations as to the manner in which the analysis is to be conducted, or as to what is to be considered a pure or an impure article (except in the case of spirits), not only do Analysts' certificates sometimes differ, but upon the same certificates the Magistrates sometimes convict and sometimes do not. The defence may always contest the correctness of the Public Analyst's analysis, and by calling other Analysts it may give a counter-expert opinion. There is by way of quasi-analytic appeal the curious section by which the Magistrate, for his own personal satisfaction, may, before he decides a case, have a portion of the sample analysed by the Government Laboratory at Somerset House. From all sides the Magistrates have complained that the Somerset House Certificate, which, by the way is perhaps not evidence, is most unsatisfactory. And how can it be otherwise? The Somerset House Analysts are not superior in point of training or notoriety to many of the Public Analysts, and the difficulties which arise in the analysis of articles which do not keep are immense. Take butter for example. The difference between butter and butter substitutes is in the percentage of soluble acids present in the former, which become less and less as the butter is kept. A time allowance is made by the Somerset House Authorities, and necessarily, because how otherwise could they give any satisfactory analysis? And such an allowance is, of course, generously made towards the defendant. The results arrive into the hands of the

\* *Bakewell v. Davis*, L.R. [1894] 1 Q.B. 296.

Magistrate, the District Analyst is put absolutely in the wrong—Government Analysts have differed, and the case is dismissed.

Sometimes there is a slight variation in this course of events when the Somerset House Authorities, after the lapse of a few days, intimate that the condition of the sample renders analysis impossible.

How unfortunate is this procedure, for not only is discredit cast upon the Local Analyst, and wholly unwarrantably, but also upon scientific evidence in general, and for what reason? For no reason at all, because the Somerset House Certificate is of no greater legal weight (even if evidence, for this is a moot point) than that of the local Public Analyst. It is not a certificate of appeal. Under the Adulteration of Manures Act the system is, as we have seen, slightly different, but as there have been few, if any, prosecutions under the Act, we cannot say how it works. Of this we may be certain that the certificate of the Analyst of Appeal will be contested by the defence as far as possible, and there is nothing which will give more weight to that certificate than would be given to the analysis of many well-known agricultural chemists. And this is not because the presiding chemist at Somerset House is not as good a chemist as any in England, but because it is only the evidence of one chemist against another. Does the French system meet any of the difficulties of which we have made mention? In France there is at all events more finality about the analysis of the expert appointed by the Court, for when a referee chemist is appointed, the Court does rely upon the facts to which he testifies. Under the French Manure Adulteration Act, much has been done to obviate unnecessary expense, and a great deal is to be said for the system. Out of a long list of eminent specialists, the litigants ought to at least find one upon whom they can mutually agree for

the analysis of their article, and then if the analysis is disputed, the Court, in selecting another, will probably have no difficulty, because the methods of analysis are laid down, and manures are not very perishable articles. But is not the Belgian system more logical? It seems to the present writer that, after all, the placing of the Laboratories under the control of a Central Committee chosen from the most eminent chemists of the country, and of each Laboratory or affiliated Laboratory under the control of a Board should ensure something like a complete and harmonious system. It is evident that the methods thus adopted can be regulated by no one individual, and that there will be little room for idiosyncrasies. There ought under such a system to be uniformity of chemical results.\* It may be urged that in England, where each can carry out his analysis as he pleases, there will surely be given results which check each other and minimise the opportunity of an unfair conviction, but to that it may be answered that it is much better for the vendor to know what methods of analysis he has to meet. And as regards the checking of one Analyst's results by another's, the difficulty would be got over by making it obligatory for the District Analyst and the Analyst of Appeal to conduct their experiments in duplicate. If, again, it be said those methods may permit him to fraudulently carry on his trade by discovering some trick, then with a Central Board for all Laboratories and a Local Board to each Laboratory, it can be urged, it will be a curious thing if such a fraud can be carried on for long. Of course, in Belgium, the Public Analyst's evidence may be attacked by the defence, but any

\* And not only uniformity of chemical results, but of administration. At present in England a manufacturer may be fined for selling vinegar which is not malt vinegar, but he will be obliged to pay duty on all vinegar, of whatsoever kind, which he manufactures,

Court will pay great respect to an analysis coming from a Laboratory under such a system.

If, then, any system be devised by which the facts proved by the Public Analyst, confirmed by the Analyst of Appeal, are taken by the Court as proved and not to be rebutted, and this is in many respects what is to be desired, there still remains the question of what facts shall be considered to prove adulteration. In England the most varying decisions are given. Thus, at one place 20 per cent. of water is allowed in butter, in others 17 per cent. is considered as adulteration. In some the minimum percentage of solids in real milk is taken as much lower than in others. In many of the States of the American Union and in some other countries, there are fixed figures, and if the percentage of water in butter or of solids in milk falls below these, the vendor is punished. It is urged that because there are cows whose milk is very poor in solids, these standards are therefore unfair on the vendor, and more especially where he is a small farmer and unable to mix the milks of many cows. But this is scarcely an argument, for why should the consumer be treated differently from the mass of producers, who supply the milk to large retail firms? In nearly all of these cases the wholesale producer has to warrant a very much larger percentage of solids than any law would ever demand. If it is impossible to graft upon our Local Government a complete system of District and affiliated Laboratories, together with a Central Laboratory of Appeal, respectively under local expert Committees and a Central Committee, to carry out the Customs, Inland Revenue, and Adulteration Acts, perhaps it will be well to consider the transfer to the Board of Agriculture of the working of the Adulteration Acts in respect to milk, butter, and cheese, giving the Board power to issue regulations, and revoke them and issue other regulations from time to time, laying down the standards of pure butter and pure milk, and varying, if necessary, these

standards with the season of the year. The Board might also issue regulations as to the methods of analysis to be adopted and the form of certificate. In such a form the most minute details would be given of the time and date of taking the sample, of handing over the sample to the Analyst, and the same details as to when the analysis was made. The certificate would state accurately the methods adopted (if a choice of method was given by the Board), and the experimental weighings, from which the percentages calculated could be checked, all determinations being made in duplicate. Time allowance in the case of the Appeal Analyst's certificate would be laid down, and percentages actually found would be given as well as the percentages as modified by the time allowance.

The writer has endeavoured to bring out some few of the questions which will again occupy the attention of the Select Committee in 1895. The more easy task of pointing out the evils which exist falls to their lot, and it is consequent upon their report that the more difficult duty arises of drafting a Bill at once preventive and repressive. A system of prevention must always mean interference by the State with commerce, the unveiling of trade secrets, and unless very carefully prepared may lead to the discouragement of our own trade to the advantage of that of the foreigner. Useless laws are a source of weakness to those which are necessary; those which allow the law-breaker to escape with impunity, bring the Legislature into disrepute. How difficult it is to deal by a law with any one kind of fraud, and yet to bear in mind the words of the great thinker, Montesquieu :—" Les lois ne doivent pas être subtiles : elles sont faites pour les gens de médiocre entendement ; elles ne sont point un art de logique, mais la raison simple d'un père de famille."

F. H. CRIPPS-DAY.

## V.—FOREIGN MARITIME LAWS: V. PORTUGAL.

## TITLE V.

*Average Losses.*

ART. 634. All extraordinary expenses incurred for ship or cargo, jointly or separately, and all injuries sustained by ship or cargo during the time they are exposed to sea perils, are deemed to be Averages.

§1. But ordinary expenses incurred by the ship, such as are customary on entering and leaving port, as well as the payment of dues and other navigation charges, as also those expenses incurred to lighten the ship to enable her to pass shallows and sandbanks known to exist when she leaves port, are not considered to be Averages.

§2. Averages are regulated by the agreements of the parties, or, failing agreement, by the provisions of this Code.

B. 99-101, F. 397-399, G. 702, 703, H. 696-698, I. 642, R. 391, S. 806-808. E. 235-237.

635. There are two classes of Averages, Great or General, and Simple or Particular.

§1. All extraordinary expenses incurred and voluntary sacrifices made by the Commander or by his orders, to avoid a danger and for the common safety of the ship and cargo from the time the cargo is laden and the ship has sailed until she has returned and discharged her cargo, are Great or General Averages.

§2. Expenses incurred on behalf of a damage sustained by the ship alone, or the goods alone, are Simple or Particular Averages.

B. 99-101, F. 397-399, G. 702, 703, H. 696-698, I. 642, 643, 646, R. 391 S. 806-808, Sc. 187. E. 235-237.

§36. General Averages are shared in proportion between the cargo and one-half the value of the ship and freight.

B. 104, F. 401, G. 702, 718, H. 698, 704, 705, I. 647, S. 814, Sc. 157.

§37. Particular Averages are borne and paid either by the ship or by the thing alone which has sustained the injury or caused expense.

B. 104, 105, 107, 110, F. 401, 402, 417, G. 718, 723, H. 698, 727-729, I. 647, R. 396, 398, S. 810, 812, 854 (7, 8), Sc. 218. E. 237, 250, 251,

§38. A survey and assessment of Averages sustained by the cargo, when visible externally, will be made prior to delivery ; if not visible, a survey may be made afterwards, provided it is completed within 48 hours of the delivery, and this without prejudice to other evidence.

§1. The assessment referred to in this Article decides what would be the value of the cargo if it arrived undamaged, and what is its actual value independent of the question of anticipated profit, but in no case can the cargo be ordered to be sold for the purpose of fixing its value unless the owner requires it.

I. 658.

§39. There will be an apportionment of General Average for the purpose of contribution whenever the ship and cargo are preserved in whole or in part.

§40. The contributory values are composed :—

- (1.) Of the whole value that the things sacrificed would have had at the time and place of discharge.
- (2.) Of the whole value which the goods that are preserved have at the same time and place, with the addition of the amount they have been depreciated by the salvage.
- (3.) Of the freight to be carried, deducting the expenses which would not have been incurred if the ship and cargo had been lost at the time the Average loss arose.

§2. Wearing apparel and clothes, seamen's wages, passengers' luggage, ammunition and provisions in the amount sufficient for the voyage, although paid for out of the contribution, do not themselves contribute.

B. 105-107, F. 419, G. 725, H. 731, I. 648, 654, 655, S. 816, Sc. 206-212.

640. Cargo for which there is no Bill of Lading or acknowledgment from the Commander, or which is not entered in the list of Cargo or Manifest is not paid for, if jettisoned, but contributes to the Average fund, if saved.

B. 109, F. 420, G. 710, H. 733, I. 649, S. 816, Sc. 190, 203.

641. Goods carried on deck contribute to General Average, if saved.

§1. When they are jettisoned or injured by the jettison, they are not entitled to a share of the Average fund, and have only a right of action against the Commander, the ship, or the freight, if they were carried on deck without the owner's consent, but there may be a special contribution between the ship, the freight and other goods carried in the same place without prejudice to the general contribution to General Average of the whole of the cargo.

F. 421, G. 710, H. 733, I. 650, S. 855, Sc. 190.

642. If, notwithstanding a jettison or cutting away of ship's apparel, the ship is not saved, there is no General Average contribution, and the goods which are saved are not liable for any payment as a contribution to the Average loss of goods which are jettisoned, damaged, or cut away.

§1. If the ship is saved by the jettison or cutting away of apparel, and whilst proceeding on her voyage is lost, goods which are saved only contribute to the jettison on the basis of their value as saved, deducting salvage expenses.

§2. Goods which are jettisoned never contribute to Averages sustained subsequently to the jettison by goods which are saved.



§3. Cargo does not contribute to payment for a ship which is lost, or condemned as unseaworthy.

B. 111-113, F. 423-425, H. 734, 735, I. 651, S. 856, 860, 861.

643. The provisions in respect to General and Particular Average apply equally to lighters, and goods loaded in such of them as are employed to lighten the ship.

§1. If goods which are discharged into lighters to lighten the ship are lost, the ship and the whole cargo will share in the loss.

§2. If the ship and the rest of the cargo is lost, goods discharged into lighters and which reach their destination do not contribute.

F. 427, H. 702-705, I. 652.

644. Goods which are still on shore do not contribute to losses sustained by a ship of which they were intended to be cargo.

H. 706.

645. If, between the shore and the ship, either the lighters or the goods laden in them sustain an injury which is deemed to be General Average, such damage will be borne in the proportion of one-third by the lighters and two-thirds by the goods laden in them.

646. If, subsequent to the adjustment of Average, goods which have been jettisoned are recovered by their owners, these latter must return to the Commander and those concerned the contribution they have received, deducting loss sustained by the jettison and salvage expenses, and dividing it amongst those concerned in proportion to the amount which each contributed to the sum received.

§1. If an owner of jettisoned goods recovers them and does not claim compensation, such goods do not contribute to Averages sustained by the remainder of the cargo subsequent to the jettison.

B. 115, F. 429, G. 732, H. 739, 740, I. 653, S. 863, Sc. 215.

647. The ship contributes on her value at the place of discharge, or on the price for which she is sold, deducting

the sum total of Particular Averages, even such as have been sustained subsequently to the General Average.

B. 110, G. 719, H. 727, I. 654, S. 854 (7, 8), Sc. 207.

648. Goods and other articles which contribute, as well as articles which are jettisoned or sacrificed, are assessed at their value, deducting freight, entrance and other expenses of discharge, taking into consideration Bills of Lading and invoices, or, failing these, any other means of proof.

§1. If the quality or value of the goods is stated in the Bills of Lading and they are worth more, they will contribute upon, and be paid upon, the real value, if saved, but if jettisoned or averaged, their value will be regulated by the Bill of Lading.

§2. If the goods are worth less, they will contribute on their nominal value, if saved, but will get only their real value if jettisoned or injured.

B. 107, 108, F. 415, 418, G. 720, 721, H. 727, I. 654, 655, 656, S. 854, Sc. 208.

649. Goods which are loaded will be assessed at their value at the place of discharge, after deducting freight, entrance and other discharging expenses.

§1. If the apportionment is made in the same country as that for which the ship sailed or was to sail, the value of the goods loaded will be determined by purchase price, augmented by the expense of getting the goods on board, but not including the premiums of insurance.

§2. If the goods are put on board in a damaged condition, they are assessed at their actual value.

§3. If the voyage is given up or the goods are sold in another country, and the Average cannot be adjusted there, the value of the goods at the place where the voyage is abandoned, or the net proceeds obtained by the sale are taken as the contributory value.

S. 721, H. 728, I. 656, S. 854. •

650. Great or General Averages will be adjusted and

apportioned in accordance with the Law in force at the place where the cargo is delivered.

S. 731, H. 722, I. 658.

651. All successive General Averages are adjusted together at the end of the voyage, as if they were one and the same Average.

§1. The provision of this Article does not apply to goods received or discharged at a port of call, but the exception only affects those goods.

S. 850.

652. The adjustment and apportionment of General Average is carried out at the Commander's instigation, and, if he neglects it, at the instigation of the owners of the ship or cargo, without prejudice to the responsibility of the first named person.

§1. The Commander must produce all the ship's books and other papers relating to the disaster, the ship, or the cargo, with his report and proper protest.

B. 118, F. 414, G. 730, H. 724, 726, I. 658, S. 851, 852, Sc. 214.

653. No action for Average can be sustained against a charterer or consignee of cargo if the Commander has received the freight and delivered the cargo without protest, even if the freight has been paid in advance.

F. 435, G. 733, I. 659.

## TITLE .VI.

### *Putting into a Port of Refuge.*

ART. 654. The following are good causes for putting into a port of refuge :—

- (1.) Provisions, water, or fuel running short.
- (2.) A well-founded fear of enemies.
- (3.) Any accident which renders the ship incapable of continuing her voyage.

S. 819.

See, however, Art. 657, *post*.

655. In any of the cases mentioned in the preceding Article, the Commander may, after consulting the principal members of the crew, and entering in the log and signing the resolution arrived at, put into port.

§1. Persons interested in the cargo laden on board may protest against the decision arrived at to put into a port of refuge.

§2. The Commander must, within 48 hours of his arrival at a port of refuge, make his report before the proper Authority.

I. 516-519, S. 819.

656. The expenses incurred by putting into a port of refuge are on account of the shipowner or charterer.

B. 103, I. 646, S. 821, Sc. 188 (7).

This appears to mean that the expenses are Particular Average on the person in whose interest the ship put into port.

657. Any putting into a port of refuge not caused by the fraud, neglect or default of the owner, commander or crew, is deemed to be legitimate.

658. When the putting into port is on account of the following reasons, it is deemed to be unlawful:—

- (1.) If the deficiency of provisions, water or fuel arises from an insufficient original supply of them, or if they have been lost in consequence of bad stowage or negligence.
- (2.) If the alleged fear of enemies has no justification in fact.
- (3.) If the accident which disables the ship from proceeding on her voyage is caused by want of proper repairs, fittings and equipments, or by bad stowage, or is the consequence of erroneous arrangements or imprudence of the Commander.

S. 820.

659. In case of putting into a port of refuge for a legitimate reason, neither the owner nor the Commander is

answerable for damages which may accrue from it to shippers or cargo-owners.

§1. If there is no lawful cause, the Commander and owner will be jointly answerable up to the value of the ship and freight.

S. 821.

660. A discharge of cargo in a port of refuge will only be permitted when necessary for repairing the vessel or making good damage to the cargo. In such cases, when within the realm and its Colonial possessions, permission must be obtained from the proper Judge, and, when abroad, from the Consular officer, if there is one, and if there is none, then from the local Authority.

G. 504, S. 822.

661. The Commander is responsible for the custody and preservation of cargo when so discharged, unless occasioned by circumstances which are beyond control.

S. 823.

662. Damaged cargo will be conditioned or sold as circumstances may point out, by leave of the authorities named in Art. 660. The Commander is bound to prove to the shipper or consignee the regularity of the course he has taken, under pain of answering for the value of the property in good condition at its place of destination.

S. 824.

663. The Commander is answerable for damages caused by any unnecessary delay in a port of refuge, but if he is there on account of fear of enemy's vessels, his departure will be decided upon in council with the principal members of the crew and those interested in the cargo on board in the same way as a putting into port is decided upon.

I. 646 (7), S. 825.

F. W. RAIKES.

[\*\* The Portuguese Code will be concluded in our next No.]

## VI.—CURRENT NOTES ON INTERNATIONAL LAW.

### *Public International Law.*

#### **The Declaration of Paris.**

The fact that Japan is an accessory to the Declaration and China not, served as the basis of a somewhat alarmist correspondence in the *Times* during October of last year. The matter was something of a mare's nest, and it is hardly necessary to deal seriously with Mr. Gibson Bowles' excursion into the "pastures new" of International Law. All that need be said is that the anonymous critic who replied to him in a series of very able letters, was, to a great extent, fighting the air.

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#### **Extradition Treaties.**

There were several new Extradition Treaties entered into by Great Britain during the past year.\* That with Liberia contained a list of 32 extraditable offences; that with Roumania 31, and that with Portugal 33. The last named contains a noteworthy proviso in Article 2 to the effect that "the Portuguese Government will not deliver up any person either guilty of or accused of any crime punishable with death."

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#### **International Arbitration.**

The spirit of International Arbitration is certainly in the air, and the moral effect of the Behring Sea Reference will long be felt. Quite recently a Treaty has been entered into between our own country and Chili, to refer to arbitration all claims arising in the course of the late Civil War, for

\* See *Parliamentary Papers*, 1894: *Treaty Series*, No. 2 (Argentina); No. 6 (Liberia); No. 7 (Portugal); and No. 14 (Roumania).

which the Chilian Government might be held responsible. The arbitrators are to be three in number, one to be appointed by the heads of each of the contracting States, and the third by such heads jointly, or in default of agreement, by the King of the Belgians.\*

\* \* \*

*Private International Law.*

**Foreign Wills and Administrations.**

In *Canterbury v. Wyburn and Others and the Melbourne Hospital*, 11 Rep., 89 (Jan.), the Privy Council approved of the well-known decision in *Whicker v. Hume*, 7 H.L.C. 124, and held that the Statutes of Mortmain are local in their application and do not affect wills of persons domiciled in the Colonies. In the case in question, a bequest by a Testator, domiciled in Victoria, of money to his Trustees for the purchase of land in England for a charitable object, was upheld. At the same time, it was held that "English Law must decide whether English land can be bought with money coming from such a source as a foreign will; and that, if it decides in the negative, the bequest must fail, not because it is illegal, but because it is impossible of execution." This decision of the Privy Council distinguishes the case of *Att.-Gen. v. Mill*, 3 Russ. 328, and practically declares the inference drawn from that case by Mr. Westlake (*Priv. Int. Law*, §165) and Mr. Justice Story (*Conflict of Laws*, §446) to be unfounded and inaccurate. As to the general question of the applicability of the Mortmain Laws to Colonial Dependencies, reference should be made to the case of *Jex v. McKinney*, 14 App. Cas. 77.

In another recent case, *In re the Goods of Brown-Séquard*, 6 R. 31 (Dec., 1894), a British subject married a naturalised Frenchman, and died having made a will in English form.

\* See *Parliamentary Papers: Treaty Series*, 1894 (No. 18).

Our own Court granted probate of the document, being satisfied that by French Law (notwithstanding sect. 10, sub-sect. 1, of the Naturalisation Act, 1870) the deceased's domicile did not necessarily follow that of her husband, but remained British, and that under the circumstances the French Courts would give effect to the will, so far as it dealt with property in France.

In another recent case, *In re Goods of Migasso*, 6 R. 37 (Dec., 1894), where an Italian subject died in this country, leaving an infant his next-of-kin, and his relatives were abroad, the Court made a grant *ad colligenda* of his property here, under sect. 73 of the Court of Probate Act, 1857, to the Italian Vice-Consul, until one of the relatives should obtain administration.

A still later case, *In re the Goods of Blank*, 6 R. 29 (Dec., 1894), as to foreign sureties to an administration bond, may also be noted.

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### *Foreign Judgments.*

An important question came before the Privy Council in the recent case of *Sirdar Gurdial Singh v. Rajah of Faridkote*, L.R. [1894] App. Cas. 670. The action was one brought in his own Courts by the Rajah of a native Indian State, having an independent civil, criminal, and fiscal jurisdiction, against the defendant, who was formerly Treasurer to the plaintiff. The claim was a personal one. At the time of the action the defendant was out of the jurisdiction of the State, but was served with certain notices of the proceedings, which he disregarded, and never appeared in the suits, or otherwise submitted to the jurisdiction. Two *ex parte* judgments were obtained against him however, but the Privy Council held that the Rajah's Courts had no lawful jurisdiction over the defendant, and that the judgments were of no effect. Lord Selborne, in a



very lucid judgment, distinguished *Becquet v. Macarthy*, 2 B. & Ad. 591 (*See Westlake, op. cit.*, §321), and disapproved of the meaning, as usually understood, of the *dictum* of Blackburn, J., in *Schibsley v. Westenholz*, L.R. 6 Q.B. 161 (*See Westlake, op. cit.*, §322). His Lordship made some very valuable remarks upon the legal question : " Territorial jurisdiction attaches (with special exceptions) " upon all persons, either permanently or temporarily, " resident in the territory while they are within it; but it " does not follow them after they have withdrawn from it, " and when they are living in another independent country. " It exists always as to land within the territory, and it may " be exercised over moveables within the territory; and in " questions of status or succession governed by domicile, it " may exist as to persons domiciled, or who, when living, " were domiciled within the jurisdiction." . . . . " In " a personal action, to which none of the causes of jurisdiction apply, a decree pronounced *in absentem* by a foreign " Court, to the jurisdiction of which the defendant has not " in any way submitted himself, is, by International Law, " an absolute nullity. He is under no obligation of any " kind to obey it; and it must be regarded as a mere nullity " by the Courts of every nation except (when authorized by " special local legislation) in the country of the forum by " which it was pronounced."

A somewhat similar point arose in the recent case of *Bouchet v. Tulledge*, XI. *Times L.R.*, p. 87, which also on another point followed the decision in *Nowvion v. Freeman*, 15 App. Cas. 1, as to the finality and completeness of a foreign judgment.

\* \* \*

#### Ownership of Moveables.

A rather curious point arose in the recent case of *N. W. Bayk v. Poynter, Son, and Macdonald*, 11 R. 73 (Jan., 1895). The facts were somewhat complicated, and

need not be considered in detail here; but in applying the principles of English Law to the matter, Lord Watson made a "general observation," apparently with the approval of Lord Herschell, L.H.C., and Lord Macnaughten, to this effect: "When a moveable fund, situated in Scotland "admittedly belongs to one or other of two domiciled "Englishmen, the question to which of them it belongs is " *primâ facie* one of English Law, and ought to be so treated "by the Courts of Scotland." The principle appears to be one which might certainly lead to some startling situations, were not its effect almost entirely nullified by the introduction of the expression " *primâ facie*."

\* \* \*

#### Bankruptcy.

The case of *In re Nordenfeldt*, 14 R. 275 (Jan., 1895), should be noted, as to a domiciled foreigner "having a "dwelling-house in England" under sec. 6, sub-sec. 1 (d) of the Bankruptcy Act, 1883.

\* \* \*

#### International Copyright.

The decision of the Court of Appeal in *Hanfstaengel v. American Tobacco Co.*, 14 R. 310 (Jan., 1895), is important as explaining the general policy and construction of the International Copyright Act, 1886.

\* \* \*

#### . Foreign Immoveables.

The case of *In re Percy, Whitwham v. Percy*, L.R. [1895] 1 Ch. 83, raises a very curious question as to wills of foreign lands, which we hope to consider in greater detail on another occasion.

•  
J. M. GOVER.

## VII.—NOTES ON RECENT CASES (ENGLISH).

**Analysis under the Margarine Act.**

THE way in which the Margarine Act, 1887, is dovetailed into the Sale of Food and Drugs Act, 1875, is shewn by the case of *Smart & Son* (appellants) v. *Watts* (respondent), in the Queen's Bench Division, where it was decided that an Inspector seeking to enforce compliance with the requirements of the Margarine Act, 1887, should, as a condition precedent, himself carry out properly the provisions of the Food and Drugs Act, 1875, as to the analysis of the substance. The Margarine Act, 1887, after enacting that Margarine packages shall be duly branded or durably marked, provides that all proceedings under it shall, save as expressly varied by the Act, be the same as those prescribed by the Sale of Food and Drugs Act, 1875, and this statute enacts, *inter alia*, that an Inspector obtaining samples of food or drugs should, if he suspects them to have been sold contrary to the statutory provisions, submit them to be analysed, notify the seller of his intention to that effect, and offer to divide the article into three parts, having each part marked and sealed, delivering one of the parts to the seller or his agent, retaining one for future comparison, and submitting the third part, if deemed suitable for analysis, to the Analyst. An Inspector, the respondent in this case, who had not carried out these requirements, when purchasing from the appellants a substance sold as butter, though afterwards admitted to be margarine, had sought a conviction for infringement of the Act, but having failed to comply with the statutory requirements, the Court held no conviction could follow, on the ground that it was a condition precedent for the Inspector to carry out the statutory provisions by having an analysis. This is a case

to be noted in *The Adulteration Acts* (*Farmers' Gazette* office, 1894), an admirable little work by R. J. Kelley, Barrister-at-Law, and Sir Charles Cameron, M.D., F.R.C.S.I., just published, in which a review of the Sale of Food and Drugs Act with all the leading cases under it up to date, is given. The authors state that the Margarine Act, 1887, which was intended to protect the sale of natural butter, has been so little used that three cases are the only recorded decisions under its provisions. They add some useful recommendations for the revision of the Margarine laws.

\* \* \*

#### Drains and Sewers.

A curious complication over drains, sewers, and nuisances lately arose in the case of *Jones v. Banter*, in the Queen's Bench, of which there seems to be, as yet, no report except in the Daily Papers. The facts of the case shewed that both plaintiff and defendant held their respective premises on leases granted by the same ground landlord, and by the lease plaintiff was entitled to a free passage for the water and soil coming from her houses into and along the drains and sewers under the defendant's premises. A short time since the defendant was served by the Vestry of St. Matthew, London, with notices pointing out that the system of drainage in connection with her houses was defective, and calling upon her to relay and make good the same. Believing that it was her duty to comply with the notices, she called in a builder, who relaid the drains to the satisfaction of the Inspector of the Vestry. The level of the drain of No. 6 (one of defendant's houses) was altered, with the result that the drainage from No. 4 (one of plaintiff's houses) could not flow into it. The Vestry subsequently threatened the plaintiff with proceedings for creating a nuisance, and she applied to Mr. Justice Day for an Injunction restraining the defendant from continuing to obstruct the flow of the drainage of No. 4 into the drain of No. 6, and the application

was referred to this Court. The plaintiff now contended that defendant ought not to have paid any attention to the notices of the Vestry, because the pipe through which the sewer passed was not a drain, but a sewer, and, therefore, repairable by the Local Authority. She further asserted that the defendant, by carrying out the work, had converted a sewer into a drain, and thereby rendered her (plaintiff) liable to penalties for an alleged nuisance. Mr. Justice Collins, after hearing the evidence, said the pipe in question was admittedly a sewer and not a drain, and, therefore, the Local Authority was liable to remove any nuisance, and not the defendant. He granted an Injunction and awarded plaintiff 40s. costs. In a manual of the *London Health Laws* (Cassell & Co., Ltd., 1894), just issued by the Mansion House Council on the Dwellings of the Poor, the law as to drains and nuisances is succinctly stated according to the provisions of the Public Health Act for London and the Metropolis Management Acts, and property owners who get into similar difficulties to those detailed in the foregoing case will find much assistance in solving them.

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#### Common Law Trade Marks.

Two cases dealing with what Mr. Fulton in his *Practical Treatise on Patents, Trade Marks, and Designs* (Jordan & Sons, 1894), calls "Common Law Trade Marks," though he attributes the origin of the expression to Lord Justice Lindley, are those of *Reddaway v. Banham* and *Reddaway v. Benthams Spinning Company*. The former is the most recent case, and there the question was as to the right of the defendant to use the term "camel-hair" as descriptive of certain belting which he manufactured. The Court of Appeal held that the defendant had such a right. A man might call the goods he was selling by the name by which anyone wanting the goods would, in ordinary course, call them in any market

in which he wanted to buy or sell them, although, in so doing, he called them by the name by which the person who complained had called his goods in a market, until, in that market, the name alone was taken to mean his goods alone. The goods manufactured by the person who offends, however, must be correctly described, *e.g.*, as of "camel-hair," as was the case here, and if that is a correct description, an Injunction to restrain the use of the term "camel-hair" will not issue. On the other hand, if, as in the case of *Reddaway v. The Bentham Spinning Company*, the belting is not made, even principally, of camel's-hair, then to describe it as camel-hair belting is not an accurate description, but simply a fancy name.

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#### Excess Fares on Tramways.

In this practical and economising age a curious point as to the right to save a halfpenny lately came before Mr. Horace Smith, at Clerkenwell. A passenger got on to a tram car and paid a penny, which carried him a certain distance; afterwards he said he would ride a further distance, and tendered a halfpenny, the fare being three-halfpence. The conductor, however, said that, though the fare was three-halfpence for the whole distance, the defendant could not continue his ride by paying a halfpenny, and must pay a penny for the further distance. The three-halfpenny fare was only admissible for through passengers, and as Mr. Horace Smith considered defendant was wrong in law but right in common sense, he merely imposed a fine of sixpence and costs. This decision has led to some correspondence in the Daily Papers, the defendant claiming that the Tramway Company ought to issue tickets for the excess fare, instancing the Railway Companies. This decision and subsequent letters have led to an interesting review of the subject of excess fares on Tramways. It appears that all the bye-laws of the London Companies

are contained in the *Abstract of Laws relating to Hackney Carriages, &c.*, published by Her Majesty's Stationery Office, on sale at the Queen's Printers, and presented by the Police to each driver and conductor on the occasion of his taking out a license. There is no bye-law relating to excess fares, and a conviction can only be obtained under another (No. 9) by putting a forced interpretation thereon. No bye-law is necessary, as the case is fully met by the provisions of the Tramways Act, 1870. The bye-law, as interpreted by the Company's solicitor in the foregoing cases, could, it was said, have been over-ruled by the Magistrate as being unreasonable. Section 51 of the Tramways Act, 1870, inflicts a penalty of 40s. upon, *inter alios*, "any person" who, "having paid his fare for a certain distance, knowingly and wilfully proceeds in any such carriage beyond such distance, and does not pay the additional fare for the additional distance," &c. The Act, it will be observed, does not say the "fare for the additional distance," but the "additional fare," that is to say, the excess fare. In the Act regulating Railways, there is a similar provision. Lord Esher, in the case of *Rayson v. South London Tramways Company* (July 12th, 1893), said that this enactment was an exceedingly strict law in favour of Tramway Companies. The proceedings in that case, before the Magistrates, resulted in the case being dismissed, and subsequently Miss Rayson recovered £150 damages against the Company, and though the Company appealed, it was unsuccessful. Section 45 of the Tramways Act, 1870, has also to be considered, providing there must be a table of fares outside the car, for if there is no such table, the passenger may object that no fare can be legally demanded, unless the provisions of the section have been complied with. The *Metropolitan Police Guide* sets out these sections of the Tramways Act.

T. F. UTTLEY.

## Quarterly Notes.

### The Dutch Government, and Mahommedan Law in the Dutch East Indies.

Those of our readers who are interested in the Laws which pervade the vast Eastern dominions of the Empress of India may remember our recording in these pages a few years ago the publication at Batavia of a great work on Mahommedan Law, the *Minhâdj at-Tâlibîn*, edited and translated into French by M. L. W. C. Van den Berg, under the orders of the Dutch Colonial Government. Since that time the Home Government of the Netherlands and M. Van den Berg (now Professor of Mahommedan Law, at the Ecole des Indes, Delft) have laboured diligently in the same field; and the result of their united efforts has recently appeared in the reproduction of another fine work under the same auspices and in a similar form, the *Fath al-Qarîb* (*La Révélation de l'Omniprésent*), by Ibn Qâsim al-Ghazzî, of which a copy has, we are glad to state, been courteously presented by the Netherlands Colonial Ministry to one of our valued contributors, the Professor of Indian Jurisprudence, King's College, London.

The *Fath al-Qarîb* (Leyden: E. J. Brill. 1894), like the *Minhâdj at-Tâlibîn*, is a work on the Shafeite branch of the Sunni Mahommedan Law. It is a smaller work than its predecessor, consisting of one volume instead of three; but as this one volume contains about 750 pages, it will be understood that its preparation must have cost a good deal both in work and in money. The Arabic text occupies the left-hand pages, the French version the right, so that the reader has the two languages side by side, and can compare their phraseology as he proceeds. The annotations are numerous, as several MSS. of the original have been collated, and many variants are recorded, besides which



there are explanatory notes here and there, and references to other parts of the same book, and to the *Minhâdj at-Tâlibîn*, the Koran, &c.

To those who are familiar with the Laws of Islam it will be no surprise to hear that a great part of this book deals with matters of prayer, cleanliness, and other duties of a religious and personal description, which Western Jurists would not recognise as coming within the category of Law. We should not expect to find in a French or English legal treatise, as we find here, a set of rules as to the proper way of bathing or the use and abuse of tooth-picks! While, however, the mere lawyer would consider a large portion of the book quite useless, the student of manners and customs might possibly deem that same portion to be of special value. It might interest the latter to follow the Eastern train of thought and to see the exquisitely minute elaboration with which rules are ~~formulated, divided,~~ and sub-divided, on points which Western civilisation ~~either ignores altogether or leaves to private training and~~ an innate sense of the proprieties of life. It must not be supposed, however, that there is *no* law, in our sense of the word, in the book of Ibn Qâsim al-Ghazzî; the subjects of Sale and Gift, Inheritance, Testamentary Disposition, Marriage, Dower, &c., are treated, each at some length, though not so fully as in the *Minhâdj at-Tâlibîn*.

As regards Inheritance (*succession*) in particular, it is to be regretted, perhaps, that the Arabian Jurist did not think so important a subject worthy of more extensive treatment. The rules, though wonderfully well expressed considering the small space they occupy, are so intensely laconic that they may sometimes mislead a careful reader, and would surely mislead a hasty one. One curious point is, however, quite clearly stated; the distant kindred (*cognats* who are not *héritiers légitimaires*, i.e., females and relations through them, other than sharers and residuaries) are

entirely excluded, the property going to the Public Treasury when there are no residuaries (and, it must be understood, no sharers), see p. 429. This is a very remarkable statement, for in the *Minhâdj at-Tâlibîn* (Vol. II., p. 226) the distant kindred are distinctly recognised, and a long classification of them is given. Now it is well known that according to the Hanifite Sunni Law the distant kindred come in, before the Public Treasury, in the absence of sharers and residuaries, but according to the Shafeite Law, as stated in the *Fath al-Qarib*, they do not; it may be added that the *Sirâjiyyah*, a Hanifite Authority (see Rumsey's *Al Sirâjiyyah Reprinted*, 2nd ed., p. 45) distinctly states that "Alshafiî, on whom be God's mercy," agrees with those who give preference to the Public Treasury. A difference between Abu Hanifa and Shafei is nothing extraordinary; but it is a singular thing that two highly esteemed works, both on the Shafeite branch of Law, should contradict one another directly on such a vital point. If it be borne in mind that, were the doctrine of the *Fath al-Qarib* to prevail, the State would succeed in preference to a man's own daughter's son, it will at once be perceived what an apple of discord is thus thrown down! Prof. Van den Berg has done good service in bringing this discrepancy before the world; and Anglo-Indian lawyers should prepare themselves for the possibility of having to argue the question, for we are told by Syed Ameer Ali (*Personal Law of the Mahommedans*, p. 20) that there are Shafeites in the Malayan Peninsula, in Ceylon, and in the Bombay Presidency.

Prof. Van den Berg would add much to the practical usefulness of his work if he could find time to supplement it with a good alphabetical Index.

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#### **A British Society of Comparative Legislation.**

The foundation, at a Conference convened by the Lord Chancellor at the Imperial Institute, on 19th December

last, of a British sister Society to the very successful and valuable Society of Comparative Legislation established in Paris in 1869, is a matter which calls for congratulatory comment in these pages.

Some twenty years have passed since we made our personal acquaintance with the French Society, and were introduced to its then President, M. Aucoc, now President of the Comité de Législation Etrangère. Since that date we have seen volume after volume of *Annuaire*s both of Foreign, and later, of French Legislation, and of *Bulletins*, issue from the Society's Press. During the latter portion of this period we have also seen something of the very valuable Translations of Foreign Codes, which, by an arrangement with the Comité de Législation Etrangère, a most useful adjunct to the French Ministry of Justice, established in 1876, which has no parallel in this country, have been issued under the editorship of members of the Society of Comparative Legislation, though undertaken at the expense of the Comité, as a national work. We have sometimes wondered that similar bodies were not established in this country, and we therefore hailed with the more pleasure our invitation to the Conference summoned by the present distinguished head of the Legal Profession in England, and this the more so that we remembered having published in our pages an Address on Jurisprudence and the Amendment of the Law delivered by Farrer Herschell, Esq., Q.C., M.P., as President of the Jurisprudence Department of the Social Science Association, at its Congress held at Liverpool, 1876.

Shortly after the account of the foundation of the British Society in the wake of the Société de Législation Comparée appeared in the *Times*, our old friend and contributor, Dr. Thomas Barclay, of Paris, wrote a letter (published in the *Times* of 26th December, 1894), embodying what the *Imperial Institute Journal* for February justly calls a very lucid and succinct account of the work of the Comité de Légis-

lation Etrangère (of which we understand he is the adviser on English Law), as it appeared to him that less was known here of the French Committee than of the French Society. Both, in fact, are labouring for similar objects, viz., the study of the Legislation of Foreign Countries, though they pursue their common object in somewhat different modes, the Society, of course, holding meetings, and reading Papers, while the Committee devotes its main energies to collecting as perfect a Library of Foreign Legislation as it can, and to publishing translations of Select Foreign Codes. In some of these objects we may flatter ourselves we are fellow workers with the French institutions, through the collection of Foreign Maritime Laws, with which our valued contributor, Dr. Raikes, has been for some years past enriching our pages. The close connection between the work of the Society and of the Committee in Paris was perhaps hardly sufficiently brought out in Dr. Barclay's Letter to the *Times*, the fact being, as mentioned by the then President of the Society at the celebration of its twentieth Anniversary in 1889, that each of the Codes published by the Committee of Foreign Legislation bears upon its title-page that it was prepared under the direction of the Society of Comparative Legislation.

We hardly expect to see such a combination of State aided and private enterprise emerge from the meeting held under Lord Herschell's presidency. The idea of State aid, though glanced at by some of the speakers, was practically put on one side as improbable of realisation. At the same time, if the Treasury could hereafter be persuaded of the utility of the work, the French precedent might reckon for at least a grant in aid.

We were glad to notice the personal testimony borne by Sir Raymond West to the value of the Comparative Study of Legislation as he had himself experienced it in India, when falling back, in default of other and more strictly

positive basis for his Decisions, upon Justice, Equity, and Good Conscience. Mr. Ilbert, to whom the credit is due of having set the ball rolling by his valuable Lecture at the Imperial Institute on a Comparative Record of British and American Legislation, on 8th November, 1894, in the course of the remarks which he made at Lord Herschell's Conference, shewed himself also cognisant of the value of the work of the French Society. We are sure that the President and Council of the Société de Législation Comparée, as well as the President and members of the Comité de Législation Etrangère, will hail with a pleasure equal to our own, the formation of a British Society of Comparative Legislation, under such distinguished auspices as those of the Lord High Chancellor of Great Britain, the Lord Chief Justice of England, Lord Justice Lindley, Lord Hobhouse, Lord Thring, Sir Raymond West, Sir Charles Turner, Mr. Cohen, Q.C., and others *quos prescribere longum*.

## Reviews.

*Le Droit des Auteurs en Belgique. Commentaire Historique et Doctrinal de la loi du 22 Mars, 1886.* Par PAUL WAUWERMANS, Avocat à la Cour d'Appel, Bruxelles. (Brussels. Soc. Belge de Librairie. 1894.)

This elaborate volume of nearly 500 pages, written by way of a Commentary on the Belgian Copyright Law of 1886, constitutes, from the mass of information which it contains respecting Copyright in Belgium, including therein the rights of Foreign Authors in Belgium, a valuable addition to the Literature of International Copyright. Its author, combining the position of a member of the Bar of the Court of Appeal in Brussels with that of one of the Secretaries of the International Literary and Artistic Association, at whose foundation we were ourselves present in Paris, in 1878, is possessed of a varied fund of knowledge which he brings ably to bear upon his subject. As a practising Advocate he pays considerable

attention to the Legal forms connected with the enforcement of Copyright, and describes its various phases in a portion of his work, Book VIII., which is entirely devoted to Procedure. Many curious byways of History are trodden by M. Wauwermans in connection with the printing privileges of the earlier masters of Typography, John and Vindelin of Spires, Christopher Plantin, and others, which he shews to have been in the nature of patents rather than of Copyright. The privilege granted to John of Spires by the Senate of Venice was so strictly granted *ad personam*, M. Wauwermans notes, that even his brother Vindelin did not succeed to it. Aldus got his patent, or privilege, on the strength of his new type, that celebrated Aldine, which a notable character among modern English printers, Pickering, so kept before him as his ideal as to deserve the title of *Aldi discipulus Anglicus*. The early history of Copyright in Belgium affords M. Wauwermans scope for giving us much curious information. His descriptions of the various periods of History as they affect his subject are terse and often epigrammatic. Thus his account of the state of Literature under the first Empire is dramatically brief and pungent. "People read but little," says M. Wauwermans, "during the fevered period of the Empire: the newspaper killed the book; and the *bulletins* of the Grand Army took the place of the most exciting novels." The controversies as to the nature of Copyright (*Droit d'Auteur*) whether it be more properly a Real or a Personal right, and if a Real right, whether it is not one *sui generis*, are passed in review by our author, who dismisses the Personal right view as practically extinct, and as between the varying and indeed conflicting views of those who hold it to be a Real right of some sort, M. Wauwermans appears to come to the conclusion, as did some distinguished members of the Belgian Chambers, in the debates on the Bill which became the Law of 1886, that it is a mere logomachy. We hope to take up on a future occasion some of the interesting questions raised by M. Wauwermans in his valuable book, the execution of which does the Société Belge de Librairie great credit.

*The Imperial Institute Journal*, Vol. I., 1895. (Imperial Institute, London.)

We are pleased to be able to call the attention of our readers to the monthly *Journal* which has been commenced with the

New Year as a medium of communication of matters of interest to the Fellows primarily, of course, but also, and that probably in increasing ratio as it gets more widely known, to the man of Science and of Letters, the Commercial man, the Colonist, and the Jurist, generally, whether Fellows or not.

Besides cases on Commercial Law, a feature which might well be extended, the first two numbers of the *Journal*, for January and February, contain notices interesting to the Jurist, and the student of Comparative Legislation and of History, in the accounts of the Lectures by Mr. C. P. Ilbert, C.S.I., on *A Comparative Record of British and American Legislation*, and the subsequent Conference convened by Lord Herschell, at which a Society of Comparative Legislation was founded, and other Lectures bearing on Jurisprudence and History, such as that by Hon. W. Lee Warner, C.S.I., on *The Roman and British Indian Systems of Government*. And the recent Address by Dr. Jameson, C.B., Administrator of the Chartered Company's Territories in British South Africa, at which the Prince of Wales took the chair, as President of the Imperial Institute, deserves the attention of the student of Colonial History and Administration, while the still more recent Lecture on *Village Communities in Southern India*, by C. Kh Krishna Menon, Lecturer at the Saidapet College, Madras, when it is reported in the March number of the *Journal*, cannot fail to attract the reader of that in many respects peerless work, Maine's *Ancient Law*, and his equally valuable, though less widely known, *Village Communities in East and West*. There is much in the subject of Mr. Menon's Lecture which requires further careful investigation, as it seems to be at least possible, if not probable, that Sir Henry Maine was led unconsciously to overstate the case for the Village Community as an Aryan institution. Mr. J. H. Nelson, in his valuable *Prospectus of a Scientific Study of Hindû Law* (Kegan Paul, 1881), has given what appear to be good *prima facie* grounds for the belief that the Village Community is an exotic in Southern India, at least, if not also in other parts besides the Madras Presidency. This is an important suggestion, which ought to receive careful consideration.

*The History of the Law of Prescription in England.* By THOMAS ARNOLD HERBERT, B.A., LL.B., of the Inner Temple, Barrister-at-Law; late Exhibitioner and Scholar, St. John's College,

Cambridge ; Equity Scholar of the Inner Temple, 1889. 1891.  
(London : Clay & Sons ; Cambridge : Deighton, Bell & Co.)

If circumstances have prevented an earlier notice on our part of the interesting Yorke Prize Essay for 1890, the author may be assured that the delay has not arisen from any want of appreciation of the result of his labours. The subject of the Prize for 1890 was chosen for the good reason that there was "no book definitely upon Prescription in English Law." If we could have wished to see a treatise telling us definitely the length, breadth, and general characteristics of Prescription at the actual passing moment, we may, nevertheless, rejoice at the appearance of a book which summarises the materials from which such a book may yet be constructed. It should be recorded further, in the author's favour, that he does not slavishly follow the opinions of others, but fearlessly states his own view when it differs from those of older writers.

That a book of this kind must contain a large amount of obsolete law is obvious from the very title, and for this the author of a "History" cannot be blamed ; here and there, however, we feel inclined to quarrel a little with Mr. Herbert for not distinguishing more clearly between defunct and existing law. We by no means wish to suggest that any confusion exists in the author's own mind, but he is not, perhaps, quite indulgent enough to readers who have not studied the subject as he has. Early in the book some points are stated about a "fine with proclamations," and the author does not mention the fact that fines have ceased to exist. Occasionally, too, there is a little want of preciseness of language, as where, for instance, we are told that under a certain Act, it was "necessary to give evidence of enjoyment within the last 60 years for about 30 years," and where, in treating of a later Act, we read several paragraphs about the "Prescription Act," but only learn by chance that the Act 2 and 3 Will. IV., c. 71, is the statute so designated. In reading about the same Act we find in a quotation from a judgment of Malins, V.C., the words "the period is fixed at twenty years," and, as the author is there treating of sect. 1, under which the periods are thirty or sixty years according to circumstances (sect. 2, under which the period is really twenty, being only mentioned later), there is an apparent contradiction which might confuse an inexperienced reader. Mr. Herbert has to mention several times a



"Prescription in a que estate," and it cannot be said that he defines it very clearly (for the uninitiated) by adopting the old phrase that it is a prescription alleged by the claimant as having been enjoyed by himself, "and those whose estate he hath," or "*tous ceux que estate il ad.*" As to this, Mr. Herbert may indeed reply that he did not write for the uninitiated; but we scarcely think he will take that ground, for the Essay, though written for learned examiners, is published for the world in general.

The historical character of the book, if it detracts something from its immediate and practical usefulness, necessarily adds much to its antiquarian interest. In treating of the difference between tithes and other property, the author cites a quaint passage beginning "but now note a strange *anomalum* in this case, Tythes differing from all other cases in Law." In another place we find the lord of a manor suing for £3 os. 9d. "for pound breach," and a judgment—in that quaint mediæval Law French which is so much more akin to the school of Stratford-at-Bow than to that of Paris—laying down that Prescription for such a custom cannot be against "*chescun estranger*," but that "*si le custome fuit que chescun tenât q tient del manoir enfreint le pound il payera £3 os. 9d. cest bon custome p ê q il poit av loial commencement.*" Elsewhere there is a good deal about sporting franchises, and, in connection with these, about Acts for the limiting the following of game; and it is curious to notice that, in the year 13 Richard II., laymen not having lands to the value of 40s., and priests not having lands to the value of £10, were forbidden to keep dogs, &c., for hunting deer, hares, conies, or other "gentlemen's game," partly because it was found that "divers artificers," &c., were wont to hunt in parks and warrens "on the holy days when good Christian people be at Church hearing divine service," and partly because such hunting was sometimes used as a mere pretence for "conferences and conspiracies for to rise and disobey their allegiance." Poor Richard II.! Perhaps at that time he little dreamed of conferences and conspiracies far more serious than a Sunday frolic, which were destined to bring destruction on his crown and life! Mr. Herbert's book is provided with a good Index; but it might be improved in a future edition by placing the numerous sub-heads on separate lines and arranging them alphabetically among themselves.

# Quarterly Digest.

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# Quarterly Digest

OF

ALL REPORTED CASES,

IN THE

Law Reports, Law Journal Reports, Law Times  
Reports, and Weekly Reporter,

FOR NOVEMBER AND DECEMBER, 1894, AND JANUARY, 1895.

By C. H. LOMAX, M.A., of the Inner Temple,  
Barrister-at-Law.

## Administration: -

- (i.) **Ch. D.—Debt—Evidence—Unexecuted Testamentary Paper.**—A testator, in a letter of instructions to his executor, stated that a debt from the executor was cancelled. The letter was not communicated to the debtor during the testator's lifetime, and was not executed as a will. *Held*, that it could not be received as evidence of the cancellation of the debt, which was still payable.—*Hyslop v. Chamberlain*, L.R. [1894] 3 Ch. 522; 43 W.R. 6.
- (ii.) **Ch. D.—Legacy—Interest—Infant—Provision for Maintenance**—A testator bequeathed legacies to two infant children, payable at twenty-one, and gave his residue upon trust for his children equally. He gave power to trustees to raise half of any child's share for his advancement, preferment, or benefit. There was no power of maintenance, but the provisions of sect. 43 of the Conveyancing Act, 1882, were applicable. *Held*, that such section ought to be read as part of the will, but that there was nothing to displace the general rule as to legacies to infant children, and that accordingly the legacies to the infants carried interest from the testator's death.—*Woodroffe v. Moody*, L.R. [1895] 1 Ch. 101.
- (iii.) **Ch. D.—Order of Probate Division—Costs "Out of Estate"—Liability of Real Estate**—A will containing specific devises of realty, but no residuary devise, was established against the heir-at-law by a judgment of the Probate Division, which ordered payment of his costs "out of the estate." *Held*, in an administration action, that the order meant out of the personal estate only, and that, the personal estate being insufficient, none of the costs of the Probate action were payable out of the real estate.—*Bridger v. Shaw*, L.R. [1894] 3 Ch. 615; 64 L.J. Ch. 47; 71 L.T. 515; 43 W.R. 159.



- (i.) **P. D.—Will Annexed—Beneficiary.**—By will the testatrix gave all her property to J. B. for her own use and for the education, &c., of her son H. B., and, in case of the death of J. B. during the minority of H. B., directed her executor to invest the proceeds of her property "for his use and benefit till he shall attain the age of twenty-one, when whatever remains shall be handed over to him." J. B. died before the testatrix, but after H. B. had attained twenty-one. The executor renounced, there were no known next-of-kin, and the Queen's Proctor declined to interfere. Administration with the will annexed was granted to H. B.—*In the goods of Adams*, 71 L.T. 699.

### Adulteration :—

- (ii.) **Q. B. D.—Sale of Food and Drugs Act, 1875, ss. 6, 25—Written Warranty.**—The appellant bought a cask of vinegar from G and Co. The cask was labelled "vinegar warranted unadulterated—G. and Co.," and the vinegar was invoiced as "G.'s vinegar." *Held*, that there was a sufficient written warranty to protect the appellant.—*Lindsay v. Hook*, 63 L.J. M.C. 231.

### Arbitration :—

- (iii.) **C. A.—Agreement Impeached—Injunction to Restrain Arbitration.**—When an agreement containing an arbitration clause is impeached in an action, the Court may restrain arbitration proceedings under the clause until the trial of the action.—*Kitts v. Moore & Co.*, 71 L.T. 676; 43 W.R. 84.
- (iv.) **C. A.—Appointment of Arbitrators after Issue of Writ—Building Society—Building Societies Act, 1874, ss. 16 (9), 34.**—The rules of a building society provided for the appointment of a board of arbitrators, to be elected and filled up by the directors, to decide disputes between the society and its members. A withdrawing member brought an action for the amount he claimed, which was disputed by the directors. The board of arbitrators was then incomplete, but was afterwards filled up by the directors, who had previously taken out a summons for a reference to arbitration. *Held*, that all proceedings should be stayed, and the dispute referred to arbitration.—*Norton v. Counties Conservative Permanent Benefit Building Society*, 43 W.R. 178.

### Assignment :—

- (v.) **C. A. & Q. B. D.—Equitable—Building Agreement—Contract by Lessor to make Advances.**—An agreement by a lessor to advance money by instalments to a builder, to be employed in erecting buildings on his land, is a mere agreement for a loan, and money due under such an agreement cannot be effectually assigned.—*May v. Lane*, 43 W.R. 58.

### Bankruptcy :—

- (vi.) **Q. B. D.—Act of.**—A circular by a trader to his customers held to be a notice of intention to suspend payment within sect. 4 (h) of the Bankruptcy Act, 1883.—*E. p. Bentley Breweries; in re Waite*, 43 W.R. 208.
- (vii.) **Q. B. D.—Act of—Deed of Assignment—Privity of Petitioning Creditor.**—The debtor executed a composition deed providing for payment of a composition, and for the execution of a deed of assignment in case of default, and the petitioning creditor assented thereto. Default was made, and the debtor executed a deed of assignment not according to the terms of the composition deed. The petitioning creditor dissented therefrom, and alleged the execution of the deed as

an act of bankruptcy. *Held*, that he could not rely on it as an act of bankruptcy, since its execution had been demanded by the trustee of the composition deed, as agent for the petitioner, and for the other creditors who assented to that deed.—*E. p. Viney; in re Adamson*, 71 L.T. 579; 43 W.R. 192.

- (i.) **C. A.**—*Act of—Goods taken in Execution—Notice to Execution Creditor—Bankruptcy Act, 1883, s. 45; 1890, ss. 1, 11 (2).*—When the sheriff has been in possession of a debtor's goods for more than twenty-one days there is an available act of bankruptcy known to the execution creditor, and he cannot therefore retain the proceeds of the execution as against the trustee in bankruptcy.—*Burns-Burns (Trustee of) v. Brown*, 43 W.R. 195.
- (ii.) **C. A.**—*Appointment of Trustee.*—Decision of Q. B. D. (*see* Vol. 19, p. 115, iii.) reversed.—*E. p. Board of Trade; in re Lamb*, L.R. [1894] 2 Q.B. 805; 71 L.T. 812.
- (iii.) **Q. B. D.**—*Costs—Small Bankruptcy—Bankruptcy Rules, 1886, r. 112 (2).*—The word "proceedings" in the rule above-mentioned includes litigious proceedings.—*E. p. The Trustee; in re Marsh*, 43 W.R. 208.
- (iv.) **C. A.**—*Deceased Debtor—Order for Administration—Jurisdiction—No Legal Personal Representative Appointed before Petition—Bankruptcy Act, 1883, s. 125.*—An order for the administration in bankruptcy of the estate of a deceased debtor may be made upon a petition served before the grant of probate or letters of administration, if at the time of the making of the order there is a duly appointed legal personal representative before the Court.—*In re Sleet; c. p. Sleet*, L.R. [1894] 2 Q.B. 797; 63 L.J. Q.B. 750; 71 L.T. 381.
- (v.) **Q. B. D.**—*Deed of Arrangement—Registration—Secured Creditors—Omission of Names—Deeds of Arrangement Act, 1887, ss. 4, 6, 19*—The affidavit of the debtor filed with a deed of arrangement, and stating the names and addresses of his creditors, may omit the creditors whose debts are secured.—*Chaplin v. Daly*, 71 L.T. 569.
- (vi.) **Q. B. D.**—*Hire Agreement—Assignment of—Bills of Sale Act, 1878, s. 8.*—The bankrupt had executed a deed of assignment of a piano and of the hire agreement whereby he had let it. The deed was not registered as a bill of sale. *Held*, that so far as concerned the hire agreement it was valid as against the trustee in bankruptcy.—*E. p. Mason; in re Isaacson*, 71 L.T. 583; 43 W.R. 128.
- (vii.) **H. L.**—*Infant Partner in Firm.*—(*See* Vol. 19, p. 33, iii.) Decision of C. A. varied. Ordered that the judgment in the action be amended by adding the words "other than" the infant, after the word defendant; and that the bankruptcy proceedings be amended in conformity therewith by adding after the firm name the words "other than" the infant.—*Lovell v. Beauchamp*, L.R. [1894] A.C. 607; 63 L.J. Q.B. 802; 71 L.T. 587; 43 W.R. 129.
- (viii.) **Q. B. D.**—*Petitioning Creditor's Debt—Merger—Bankruptcy Act, 1883, s. 7 (2), (3).*—A debt, though merged in a higher security, such as a judgment, will support a bankruptcy petition.—*In re King and Beesley*, 71 L.T. 580; 43 W.R. 78.
- (ix.) **Q. B. D.**—*Petition by Debtor.*—The presentation of a bankruptcy petition by a debtor for his own benefit is not an abuse of the process of the Court, and he ought to be adjudicated bankrupt thereon.—*E. p. Painter; in re Painter*, L.R. [1895] 1 Q.B. 85; 64 L.J. Q.B. 2; 71 L.T. 581; 43 W.R. 144.
- (x.) **Q. B. D.**—*Petition—Amendment.*—A bankruptcy petition cannot be amended by adding creditors more than three months after the act of bankruptcy alleged.—*E. p. Maund; in re Maund*, 43 W.R. 207.

- (i.) **Q. B. D.**—*Proof—Appropriation of Payments—Interest.*—Sect. 23 of the Bankruptcy Act, 1890, does not affect the rule that where a debtor does not appropriate his payments either to interest or principal, the creditor may appropriate the first payments to interest, and the later ones to principal.—*Parker v. Young*, 71 L.T. 435; 43 W.R. 16.
- (ii.) **C. A.**—*Receiving Order—Domicile of Debtor—Dwelling-House—Bankruptcy Act, 1883, s. 6, sub-s. 1 (d).*—A debtor who has resided in a house of his own in England, but has gone to reside abroad, and has abandoned the house as his residence for more than a year before the presentation of a petition against him, and has not again adopted it as his residence, though he might have resided in it within the year, had he chosen to do so, cannot be considered to have had a "dwelling-house" in England within the prescribed period.—*In re Nordenfeldt*, L.R. [1895] 1 Q.B. 151; 71 L.T. 565.
- (iii.) **Ch. D.**—*Voluntary Settlement—Avoidance—Puisne Incumbrancers—Bankruptcy Act, 1883, s. 47.*—The avoidance of a voluntary settlement in bankruptcy proceedings does not give the settlor's trustee in bankruptcy any priority over puisne incumbrancers.—*Sanguinetti v. Stuckey's Bank*, 43 W.R. 154.
- (iv.) **Q. B. D.**—*Warehouseman's Lien—Custom of Bristol.*—By the custom of the city of Bristol a warehouseman is entitled to a general lien on all the goods which are the property of the depositor and warehoused with him, for all warehouse rent, labourage and other charges, in connection with such goods or with other goods warehoused by the same person either before or after.—*Carr v. Ford*, 71 L.T. 584; 43 W.R. 159.

### Bill of Sale:—

- (v.) **Q. B. D.**—*Consideration—True Statement.*—Six persons joined to lend £600 to S. They made their advances at different times, and in different amounts. When the whole £600 had been advanced, S. gave a bill of sale to T., one of the six, the consideration being stated as "£600 now paid by T." *Held*, that the consideration was truly stated, and that T. was not a trustee, but merely a collector.—*F. p. Tarbuck*; *in re Smith*, 43 W.R. 206.
- (vi.) **Q. B. D.**—*Entry of Satisfaction—Affidavit of Verification.*—The affidavit verifying the signature and consent of the person entitled to the benefit of a bill of sale to the entry of satisfaction thereof need not be made by a solicitor.—*White v. Rubery*, L.R. [1894] 2 Q.B. 923; 71 L.T. 614.

### Building Society:—

- (vii.) **C. A.**—*Instrument of Dissolution—Variation of Rights—Building Societies Act, 1874, s. 32.*—Decision of Ch. D. (see Vol. 20, p. 3, v.) reversed.—*Kemp v. Wright*, 64 L.J. Ch. 59; 71 L.T. 650.

### Charity:—

- (viii.) **C. A.**—*Compulsory Sale of Land—Voluntary Subscriptions—Endowment.*—Decision of Ch. D. (see Vol. 19, p. 117, v.) affirmed.—*In re Clergy Orphan Corporation*, L.R. [1894] 3 Ch. 145; 64 L.J. Ch. 66; 71 L.T. 450; 43 W.R. 150.
- (ix.) **Ch. D.**—*Exhibitions at College—Endowed School—Jurisdiction of Commissioners—Endowed Schools Acts, 1869, 1873, 1874.*—Property was held on trust to provide exhibitions at Oxford for scholars from certain schools, one of which, Shrewsbury, was a public school, and the others endowed schools. *Held*, that the exhibitions were educational endowments, and formed part of the endowments of the schools, and that as

Shrewsbury school was not solely interested in the endowment, the Charity Commissioners had jurisdiction to make a scheme for the charity, and that the jurisdiction of the Court was excluded.—*Attorney-General v. Dean and Canons of Christ Church*, L.R. [1894] 3 Ch. 524; 68 L.J. Ch. 901; 71 L.T. 468; 43 W.R. 198.

- (i.) **P. C.—Mortmain—Colonial Law.**—An English statute will not be held to avoid a bequest in a colonial will on the ground that it is against the local law of England, without very clear ground appearing in such statute. The English statutes of mortmain do not operate to avoid a gift of money to a charity in a valid colonial will coupled with an obligation to lay it out in land.—*Mayor of Canterbury v. Wyburn*, 71 L.T. 554.
- (ii.) **C. A.—Mortmain—Corporation Stock.**—Decision of Ch. D. (see Vol. 19, p. 77, ii.) affirmed.—*Elmsley v. Mitchell*, L.R. [1894] 3 Ch. 704; 71 L.T. 558.

### Colonial Law:—

- (iii.) **P. C.—Canada—Quebec Act—Time for Complaining—Expiry.**—The right of a municipal elector to demand the annulment of the corporate appropriation for expenditure on the ground of illegality absolutely expires within three months from the date thereof, and cannot be extended by any procedure clause (see sect. 3 of the Civil Procedure Clause) which presupposes an existing right of action, and regulates its exercise.—*Dechéne v. City of Montreal*, L.R. [1894] A.C. 640; 71 L.T. 554.
- (iv.) **P. C.—Cape of Good Hope—Company—Issue of Shares at a Discount—Damages.**—Directors of a company *bonâ fide* agreed, in consideration of services rendered, to issue shares at a discount. The shares were allotted, and the amount paid up less the discount. The allottee sold them to *bonâ fide* purchasers at a profit. Held, that the directors were liable to the company, but only for the discount allowed, there being no fraud proved, nor any further resulting damage to the company.—*Hirsche v. Sims*, L.R. [1894] A.C. 654; 71 L.T. 357.
- (v.) **P. C.—New South Wales—New Trustees—Appointment of—Vesting.**—Where an application for the appointment of a new trustee in place of one incapacitated is, in the opinion of the Court, duly made and served, the Court has power to direct the master to make the appointment, and the vesting of the property follows without further order.—*Plomley v. Richardson*, L.R. [1894] A.C. 682; 71 L.T. 377.

### Company:—

- (vi.) **Ch. D.—Debenture—Issue—Irregularity—Valuable Consideration—Directors' Authority.**—By one of the articles of a company it was provided that any debenture bearing the seal of the company and issued for valuable consideration, should bind the company notwithstanding any irregularity touching the authority of the directors or officers to issue the same. The company owed B, a director, a sum of money with interest at 6 per cent., and B. owed D. a smaller sum. It was arranged that the company should issue to B. a debenture, with 5 per cent. interest, for the amount of his debt to D., and that he should transfer it to D. The debenture bore the company's seal and was signed by B. and countersigned by the secretary. There were minutes of a directors' meeting at which the issue and sealing of the debenture were authorised. Held, that the debenture was given for valuable consideration, and that the irregularity in its issue was cured by the article mentioned.—*Davies v. R. Bolton & Co.*, L.R. [1894] 3 Ch. 678; 63 L.J. Ch. 748; 71 L.T. 336; 43 W.R. 171.

- (i.) **Ch. D.—Deceased Shareholder—Scotch 'Sequestration—Title to Shares.**—A domiciled Scotchman was, at the time of his death, the registered holder of shares (of which he was trustee) in an English company. After his death a Scotch sequestration was issued against his estate, and a trustee was appointed. By Scotch law the legal interest in the shares was vested in him. *Held*, that the title to the shares was sufficiently vested in the sequestrator, and that no order under O. xvi., r. 46, to dispense with a legal personal representative was necessary.—*In re Tuticorin Cotton Press Co.*, 71 L.T. 723; 43 W.R. 190.
- (ii.) **Ch. D.—Director—Qualification Shares—Agreement to Take.**—The articles of a company provided that a director should vacate office if he failed to acquire the qualification shares within a specified time. A. was appointed a first director, and accepted office, and acted to some extent, but never applied for shares, nor were any allotted to him. The company never did any business and did not go to allotment; it was wound up. *Held*, that there was no agreement by A. to take shares from the company, but only to acquire them, and that as the company never went to allotment, a reasonable time for acquiring the shares had not elapsed, and that A. ought not to be on the list of contributories.—*In re Issue Company; Hutchinson's Case*, 71 L.T. 667.
- (iii.) **C. A.—Director—Qualification Shares—Time for Acquiring.**—The articles of a company provided that a director should acquire his qualification shares within three months from his appointment. The signatories to the articles were to be directors till six of them should nominate another director in their place. The six signatories appointed another director within three months of their appointment. Two of them never otherwise acted as directors, and never acquired their qualification shares. *Held*, that directors who resigned within three months were not bound to take the qualification shares.—*In re R. Bolton & Co.*, L.R. [1894] 3 Ch. 356; 64 L.J. Ch. 27.
- (iv.) **C. A.—Director—Qualification Shares—Joint Holding.**—A firm agreed to become agents for a company and to take 100 shares. A member of the firm signed the memorandum of association in his own name. He became a first director, the director's qualification being 100 shares. The firm made application for 100 shares, which were allotted. This allotment was treated as a satisfaction of the partner's subscription. *Held*, in the winding-up, that the partner was not liable, either by reason of his subscription or as director, to take another 100 shares.—*E. p. Dunster; in re Glory Paper Mills Co.*, L.R. [1894] 3 Ch. 473; 63 L.J. Ch. 885; 71 L.T. 528; 43 W.R. 164.
- (v.) **Ch. D.—Dividend—Net Profits—Estimate—Directors' Remuneration.**—The articles of a company provided that the net profits should be applied in payment of a certain dividend, and that ten per cent. of the surplus should be paid to the directors. In 1883 resolutions declaring a dividend were passed. The dividend was chiefly payable out of a fund made up of the estimated value of certain claims, which eventually turned out to be worthless. The proceedings were perfectly regular, and no improper motive was attributed to anyone. The directors claimed ten per cent. on the balance of the said fund. On a summons by the voluntary liquidator, *held*, that at this distance of time, and considering that the estimate was a reasonable one and that no improper motive was suggested, the directors were entitled to the sum claimed.—*E. p. Kemp; in re Peruvian Guano Co.*, L.R. [1894] 3 Ch. 690; 63 L.J. Ch. 818; 71 L.T. 611; 43 W.R. 170.
- (vi.) **Ch. D.—Officer of Building Society—Solicitor.**—W., a solicitor, was appointed solicitor of the Liberator Building Society at an annual salary, out of which he was to pay all office expenses, and he undertook to pay to the society all fees received by him from the society's

clients. *Held*, that under these circumstances, W. was an officer of the society, and that his estate was liable to contribute all sums that he had received as an officer.—*In re Liberator Building Society*, 71 L.T. 406.

- (i.) **C. A.—Mortgage Debenture—Land Registry—Deposit of Security.**—Decision of Ch. D. (see Vol. 20, p. 5, v.) reversed.—*Somerset v. Land Securities Co.*, L.R. [1894] 3 Ch. 464; 63 L.J. Ch. 880; 71 L.T. 512; 43 W.R. 182.
- (ii.) **C. A. & Ch. D.—Reconstruction—Creditor—Contingent Liability—Joint-Stock Companies Arrangement Act, 1870, s. 2.**—A lessee of collieries assigned his leases to a company, which covenanted to indemnify him against all claims. The company was wound up, and a scheme was sanctioned whereby a new company was to be formed to take over the assets, undertake the liabilities, and pay the unsecured creditors. The lessee sought to prove against the old company for the total estimated amount of his possible liabilities. *Held*, that he was bound by the scheme, that if a creditor at all, he was not an unsecured creditor, and that his proof could not be admitted.—*In re Midland Coal, Coke and Iron Co.*; *Craig's Case*, 63 L.J. Ch. 859; 71 L.T. 329 and 705.
- (iii.) **Ch. D.—Shares—Company Limited by Guarantee—Companies Act, 1862, ss. 7, 14.**—The articles of a company limited by guarantee may provide for the division of the interests of the members in the company's undertaking into transmissible shares.—*Malleon v. General Mineral Patents Syndicate*, L.R. [1894] 3 Ch. 538; 63 L.J. Ch. 808; 71 L.T. 476; 43 W.R. 41.
- (iv.) **Ch. D.—Shares—Contract to take by Infant—Repudiation—Effect of.**—An infant applied for shares, which were allotted; she attended no meetings and received no dividends, and the liquidator in the voluntary winding-up took her name off the register. *Held*, that there had been a total failure of consideration, and that she was entitled to prove for the money paid on application and allotment.—*Hamilton v. Vaughan-Therrin Electric Engineering Co.*, L.R. [1894] 3 Ch. 589; 63 L.J. Ch. 794; 71 L.T. 325; 43 W.R. 126.
- (v.) **C. A.—Shares—Issued at a Discount—Winding-up—Adjustment between Contributors.**—A company issued shares at a discount under a power contained in the articles. It was wound up, and all the creditors and costs were paid before the whole of the capital was called up. *Held*, that the issue of shares at a discount was void; and therefore that the discount shares must be called up in full in order to adjust the rights of the shareholders *inter se*.—*In re Railway Time Tables Publishing Co.*, 71 L.T. 652; 43 W.R. 117.
- (vi.) **Ch. D.—Shareholders—Personal Representative of—Calls on Shares.**—The widow and residuary legatee of T., a shareholder in the plaintiff company, possessed herself of the personal estate of the testator, but did not take a transfer of certain shares held by him in the plaintiff company. Notice was given of a call on the shares. She executed deeds assigning all the personal estate, except the shares, to L., in consideration of his covenant to indemnify her against liabilities, and to provide her with necessities and comforts. *Held*, that the widow was bound to administer the estate according to law, and that as residuary legatee she only took what was left after the administration, that she ought to have provided for the calls on the shares, that the plaintiffs were entitled to be paid the calls and interest, and that the deeds of assignment were void as against them.—*Rent and General Collecting and Estate Co. v. Troughton*, 71 L.T. 427.

- (i.) **Ch. D.**—*Winding-up—Supervision Order—Petitioner's Debt.*—A debt incurred by a company under an agreement entered into after it has gone into voluntary liquidation is no ground for a petition for a supervision order, although the agreement and the liquidation formed part of the same scheme.—*In re Bank of South Australia*, L.R. [1893] 3 Ch. 722; 64 L.J. Ch. 44.
- (ii.) **C. A.**—*Winding-up—Report of Official Receiver—Fraud.*—Decision of Ch. D. (see Vol. 19, p. 121, i.) affirmed.—*In re General Phosphate Corporation*; *in re Northern Transvaal Gold Mining Co.*; *in re Delhi Steamship Co.*, L.R. [1895] 1 Ch. 3; 71 L.T. 619; 43 W.R. 34.
- (iii.) **Ch. D.**—*Winding-up—Rates—Occupation.*—The liquidator must pay in full the rates falling due in respect of the company's premises after the winding-up, where such premises are retained by him with a view either of obtaining a better price, or of avoiding a loss. In default of payment, liberty to restrain ought to be granted.—*In re Blazer Fire Lighter*, 71 L.T. 665.
- (iv.) **Ch. D.**—*Winding-up—Scheme—Official Receiver—Reservation of Right against Directors—Sanction of Court*—When a scheme sanctioned by the Court reserves to the official receiver his right to proceed against the directors of the old company for misfeasance, the Court will not sanction such proceedings if it is satisfied that the directors of the new company have *bonâ fide* decided that such proceedings will be detrimental to their company. The Court, and not the Board of Trade, has the determination of the question.—*In re New Zealand Loan and Mercantile Agency Company*, 71 L.T. 693.  
See Contract, p. 39, i.

### Compulsory Purchase:—

- (v.) **Ch. D.**—*Application of Purchase Money—Vicarage—Repairs.*—Money paid for land purchased by the Commissioners of Sewers was to be invested in land to be settled to the like uses as the land taken. The Commissioners took part of a churchyard. *Held*, that in sanctioning the investment of part of the purchase money in a house which could be adapted for the purpose of a vicarage, the Court may also sanction the application of part of the money towards the necessary repairs and alterations.—*Ex p. Commissioners of Sewers and Vicar of St. Botolph*, L.R. [1894] 3 Ch. 544; 63 L.J. Ch. 862.

### Contempt of Court:—

- (vi.) **Ch. D.**—*Proceedings in Camera—Publication.*—An injunction was granted to restrain H. from communicating with a female ward of Court, and further proceedings took place *in camera*. It then appeared that he and the ward were already married. The hearing was adjourned. The S. newspaper published an account of the matter, giving names, and stating that the hearing was private. The information was furnished by P., a friend of H., who had been informed by H. of the facts. The M. newspaper gave a similar account, not stating that the hearing was private. It was copied into two other newspapers. Motion was made to commit H., P., and the publishers of the four newspapers. The publisher of the M. swore that he did not know that the hearing was private. *Held*, that the publication in the S. was a contempt, but not serious, and the Court was satisfied that it was not intentional. *Held*, that H. and the publisher of the S. must pay the costs of the motion; but that it must be dismissed with costs as against P. and the other publishers as an abuse of the process of Court.—*In re Martindale*, L.R. [1894] 3 Ch. 193; 71 L.T. 968; 64 L.J. Ch. 9; 43 W.R. 53.

**Contract:—**

- (i.) **C. A. & Ch. D.**—*Alternative Stipulations—Default in One—Right of Corenantee—Company—Equality of Shares.*—Under an ordinary memorandum of association, under which the capital of a company is to be divided into shares of equal amount, the interests of the shareholders must be equal in all respects. *Quere*, whether such a company can issue preference shares. A. assigned the lease of a mine to X, and X. covenanted that he would either pay A. £1,000, or transfer to him £1,000 worth of fully paid-up shares in a company to be formed by him for working the mine, the capital of which was not to exceed £12,000. X. formed a company with its capital divided into preference and ordinary shares. *Held*, that none of these shares would satisfy X.'s covenant, and that as he had put it out of his power to perform the covenant as to transferring shares, he must pay £1,000. *Held*, by C. A., that as the shares had no market value, the contract could not be satisfied by the transfer of shares.—*McIlquham v. Taylor*, L.R. [1895] Ch. 53; 63 L.J. Ch. 758; 71 L.T. 484 and 679.

- (ii.) **Ch. D.**—*Breach—Employment.*—The defendants engaged to employ the plaintiff as musical director for a fixed term, at a stated salary, with a provision that his name should be announced in certain newspapers, and on bills and programmes. An opera was produced at the theatre during the term, which the composer conducted, thereby doing the most important part of the work of the musical conductor. The plaintiff's salary was paid, and his name published as agreed. *Held*, that the contract meant that he should be really employed, and that he was entitled to more than nominal damages, although it had not been shown that his non-employment would prevent him from getting another engagement.—*Bunning v. Lyric Theatre*, 71 L.T. 396.

**Copyright:—**

- (iii.) **Ch. D.**—*Sporting Papers—"Selection" of Horses.*—C. was the registered proprietor of a weekly sporting paper, in which were published every Monday the names of the horses selected as probable winners for the races to take place during the week. P., the proprietor of another sporting paper, quoted C.'s "selections," giving C.'s name. *Held*, that P. had merely published the fact that C. thought that particular horses would win, and that there was no infringement of copyright.—*Chilton v. Progress Printing and Publishing Company*, 71 L.T. 664; 43 W.R. 136.

**Costs:—**

- (iv.) **Ch. D.**—*Taxation—Copy Correspondence—Discretion—Trustees' Costs—Statute-Barred Costs.*—The amount to be allowed for copy correspondence is in the taxing master's discretion, but his answer must show that he has ascertained what part of the correspondence was necessary for the due consideration of the case. In taxing the costs, charges and expenses properly incurred by trustees, statute-barred costs ought not to be disallowed, as trustees cannot be compelled to plead the statute.—*Budgett v. Budgett*, 71 L.T. 632; 43 W.R. 167.
- (v.) **Ch. D.**—*Taxation—Discretion—R.S.C., 1888, lxx, r. 27, sub-r. 39.*—The Court has no jurisdiction to review the allowance of a witness's costs under the rule above-mentioned, if on proper consideration they have been allowed by the taxing master.—*Oliver v. Robins*, 71 L.T. 636.



**County Court:—**

- (i.) **C. A.**—*Costs—Contract or Tort—County Courts Act, 1888, s. 116.*—An action which can be maintained for misfeasance, contract or no contract, is "founded on tort," and a verdict for £20 will therefore carry costs on the High Court scale.—*Taylor v. M.S. & L.R.*, L.R. [1895] 1 Q.B. 184; 64 L.J. Q.B. 6; 71 L.T. 596; 43 W.R. 120.
- (ii.) **Q. B. D.**—*Jurisdiction—Balance—Admitted Set-off—R.S.C., 1883, O. lv., r. 12—County Courts Act, 1888, s. 57.*—A special indorsement on a writ stated the total claim as £148, and gave credit for payments on account £25, reducing the claim to £123. The plaintiff recovered only £50. *Held*, that the set-off was an admitted set-off, that the county court had jurisdiction, and that county court costs only should be allowed.—*Lovejoy v. Cole*, L.R. [1894] 2 Q.B. 861; 71 L.T. 374; 43 W.R. 48.

**Criminal Law:—**

- (iii.) **Q. B. D.**—*Form of Indictment—Receiving Goods—False Pretences.*—In an indictment for receiving goods knowing them to have been obtained by false pretences, it is not necessary to set out the false pretences.—*Reg. v. Taylor*, L.R. [1895] 1 Q.B. 25; 71 L.T. 571; 64 L.J. M.C. 11; 43 W.R. 24.
- (iv.) **Q. B. D.**—*Summary Jurisdiction First Offence—Right to Jury—Summary Jurisdiction Act, 1879, s. 17.*—The appellant was convicted by the justices of keeping a brothel. Before sentence a previous conviction was reported. For a second offence she was liable to four months imprisonment. The justices, however, sentenced her to two months, in default of paying a fine of £20. *Held*, that the justices had in effect treated the charge as for a first offence, that the appellant had not been charged with an offence for which more than three months imprisonment could be imposed, and was not entitled to claim a trial by jury.—*Reg. v. Fowler*, 64 L.J. M.C. 9.

**Ecclesiastical Law:—**

- (v.) **Ch. D.**—*Advowson—Right of Presentation—Turns—Exchange—Usurpation.*—As between patrons with alternate turns of presentation, a presentation on an exchange of livings counts as a turn; and if one patron usurps the turn of the other, the order of turns is not altered, but the ousted patron (after six months) loses his turn; and on this point there is no distinction between usurpation by a total stranger, and usurpation by a person privy in, or party to, the title.—*Keen v. Denny*, L.R. [1894] 3 Ch. 169; 64 L.J. Ch. 55; 71 L.T. 566; 43 W.R. 39.
- (vi.) **Consistory Court of London.**—*Burial—Cremated Remains—Church closed for Interment.*—A faculty was refused for the insertion in a niche in the wall of a church closed for burial of an urn containing the ashes of a cremated body, in consequence of the inconvenience which might be caused in case of alterations in the church. *Held*, that the interment of the urn beneath the floor of the church might be allowed, a burial fee being paid to the incumbent. *Semble*, that cremated remains cannot be lawfully interred in or under a parish church without a faculty.—*In re Kerr*, L.R. [1894] P. 284.
- (vii.) **Consistory Court of London.**—*Second Communion Table—Side Chapel.*—The Court, before granting a faculty for placing a second communion table in a side chapel of a church, requires to be satisfied that such chapel is so separated from the body of the church as to indicate that it is intended for use when the chancel or nave is not used for service.—*St. Peter's Vicar v. Parishioners*, L.R. [1894] P. 350.

**Estoppel :—**

- (1.) **C. A. & Ch. D.**—*Judgment—Consent.*—Judgment by consent of parties creates an estoppel just as much as a judgment arrived at by the Court after a case has been fought out.—*F. v. Bank of England; in re South American and Mexican Co.*, L.R. [1895] 1 Ch. 37; 63 L.J. Ch. 803; 71 L.T. 334 and 594; 43 W.R. 107 and 131.

**Friendly Society :—**

- (ii.) **Q. B. D.**—*Withholding or Misapplying Property—Friendly Societies Act, 1875, s. 16, sub-s. 9.*—The steward of a club, registered as a friendly society, was entrusted with the club stock of liquors, tobacco, &c. A large deficiency was found on taking stock. *Held*, that the facts showed a *prima facie* case of withholding or misapplying the property of the society, and that the magistrate ought to issue a summons.—*Reg. v. Bennett*, 63 L.J. M.C. 181.

**Gaming :—**

- (iii.) **C. C. R.**—*Betting House Act, 1853, s. 1—Resorting to House—Jury—Election of Accused—Summary Jurisdiction Act, 1879, s. 17.*—On trial of an indictment for keeping open a house for the purpose of betting with persons resorting thereto, it is not necessary to prove actual resorting to the house, the purpose being the offence, and it is enough to prove that the house was opened and advertised as a betting house. But where no evidence except that of resorting is offered, actual resorting must be proved, and the receipt of letters and telegrams directing the accused to make bets is not enough. When an accused person elects to be tried by a jury, the procedure is the same as in the case of indictable offences. He may therefore be committed in respect of any indictable offence disclosed by the depositions, and counts may be added in respect of any indictable offence so disclosed, except in cases falling within the Vexatious Indictments Act.—*Reg. v. Brown*, L.R. [1895] 1 Q.B. 119; 64 L.J. M.C. 11.

**Habeas Corpus :—**

- (iv.) **Q. B. D.**—*Service—Disobedience—Attachment.*—A writ of *habeas corpus* can only be properly served by delivering the original writ to the person served. If a copy is served the person served cannot waive the irregularity by appearing so as to be liable to attachment for disobedience. If the original is not delivered to the principal of several persons served, the service of a copy upon the others is not good service.—*Reg. v. Rowe*, 71 L.T. 578.

**Highway :—**

- (v.) **Q. B. D.**—*Bridge—Canal Company—Obligation to Repair—Approaches.*—The Act which incorporated a canal company, now represented by the defendants, provided that it should make and keep in repair certain bridges. One of these carried a road over the canal, and raised approaches had to be constructed. *Held*, that the approaches were practically part of the bridge, and that the defendants were bound to keep them in repair.—*Nottingham County Council v. M.S. & L.R.*, 71 L.T. 430.
- (vi.) **Q. B. D.**—*Surveyor—Liability of—Debt due from Predecessor—Highway Act, 1835.*—No action lies against a surveyor of highways, appointed under the Act, for the price of materials supplied to his predecessor for the repair of highways, where such predecessor has died insolvent after having received from the parish moneys sufficient to pay for such materials.—*Frodingham Iron and Steel Co. v. Bowser*, L.R. [1894] 2 Q.B. 791; 71 L.T. 433; 64 L.J. Q.B. 12.

**Husband and Wife:—**

- (i.) **P. D.**—*Divorce—Variation of Settlement.*—Where there were five beneficiaries who might on a remote contingency become entitled to a share in the funds settled, four of whom had consented to the *corpus* being returned to the petitioner, and the fifth of whom was in the interior of Africa and could not be communicated with, the Court ordered that the interests of all five should be extinguished. As one of the trustees had left the country and could not be found, the costs of the two others were allowed as if he had joined with them.—*Storer v. Storer*, 71 L.T. 704.
- (ii.) **P. D.**—*Judicial Separation—Dismissal of Petition—Costs.*—In a suit by the wife for judicial separation on the ground of cruelty, it appeared that many affectionate letters had been exchanged between the parties after the alleged acts of cruelty. The petition was dismissed, and the "usual order" for the wife's costs was refused.—*Hough v. Hough*, 71 L.T. 703.
- (iii.) **P. D.**—*Paraphernalia—Married Women's Property Act, 1882, ss. 1, 2, 17.*—A husband made his wife valuable presents of jewellery. Most of them were made on Christmas days, or on her birthdays, or as "peace offerings" after disputes, and with the knowledge of the husband the wife took entire possession of the jewellery. After taking divorce proceedings the husband, for the first time, alleged that he only allowed her the use of the jewels. *Held*, that they were not paraphernalia, but the absolute property of the wife.—*Tasker v. Tasker*, L.R. [1895] P. 1.
- (iv.) **P. D.**—*Restitution of Conjugal Rights.*—Delay is no bar to a suit for this purpose.—*Beauclerk v. Beauclerk*, 71 L.T. 376.
- (v.) **Q. B. D.**—*Separation—Annoyance by Wife—Adultery.*—By a separation deed, without a trustee, the husband covenanted to pay an annuity, and the wife covenanted not to molest, annoy, or interfere with him. She committed adultery, and a child was born. *Held*, that this was no defence to an action for arrears of the annuity.—*Sweet v. Sweet*, L.R. [1895] 1 Q.B. 12; 71 L.T. 672.

**Inclosure:—**

- (vi.) **Ch. D.**—*Construction of Act—Separate Ownership of Surface and Minerals—Compensation Clause.*—In the construction of Inclosure Acts, where the ownership of the surface and the minerals is severed, regard must be had to the following rules: (1) *Prima facie* the surface owner has the ordinary right to support; (2) he can only be deprived of such right by unequivocal words, or by implication from the context. The absence or inadequacy of any provision for compensation tends strongly against such implication.—*Bell v. Earl of Dudley; Consett Waterworks Co. v. Ritson*, 43 W.R. 122.

**Infant.**—See Bankruptcy, p. 33, vii.

**Injunction:—**

- (vii.) **Ch. D.**—*Contract of Service—Clause Affirmative in Substance.*—A contract of service provided that the employer should not give the employed notice to leave, except in the case of misconduct or breach of the agreement. *Held*, that the clause, though negative in form, was affirmative in substance, and that an injunction ought not to be granted to enforce it.—*Davis v. Foreman*, L.R. [1894] 3 Ch. 654; 43 W.R. 168.
- (viii.) **C. A.**—*Slander of Goods of Rival Trader.*—The defendant, a retailer, was supplied by the plaintiff with his infants' food for sale. The defendant fixed to each bottle of the food a notice commending a rival food as the best made. The Court below was of opinion that this

was a mere puff of the rival food, and gave the plaintiff no ground of complaint. *Held*, however, that if on the whole of the evidence it appeared that the statement in the defendant's notice was a false statement about the plaintiff's goods, and had injured or was likely to injure the plaintiff, the action would lie. New trial ordered.—*Mellin v. White*, L.R. [1894] 3 Ch. 276.

### International Law :—

- (i.) **P. C.**—*Jurisdiction of Foreign Court—Decree Against Absent Foreigner.*—No territorial legislation can give jurisdiction which ought to be recognised by a foreign court against absent foreigners who owe no allegiance or obedience to the legislating power. In all personal actions the courts of the country in which the defendant resides, not those of the country where the cause of action arose, should be resorted to.—*Sirdar Gurdial Singh v. Rajah of Faridkote*, L.R. [1894] A.C. 670.

### Joint Contractor :—

- (ii.) **C. A.**—*Judgment on Cheque—Bar.*—Decision of Q. B. D. (*see* Vol. 19, p. 126) affirmed.—*Wegg-Prosser v. Evans*, L.R. [1895] 1 Q.B. 108; 64 L.J. Q.B. 1; 43 W.R. 66

### Judge :—

- (iii) **C. A.**—*Action Against.*—No action will lie against a judge in respect of any acts done by him in his judicial capacity, even if they are done maliciously.—*Anderson v. Gorrie*, 71 L.T. 382.

### Justices :—

- (iv.) **Q. B. D.**—*Summary Jurisdiction—Cab Fare—Refusal to Pay—Civil Debt.*—A cab fare, recoverable under the Town Police Clauses Act, 1847, is a civil debt within the meaning of sect. 6 of the Summary Jurisdiction Act, 1879, and refusal to pay such a fare is not a criminal offence, whereby the person refusing is liable to conviction and a term of imprisonment. The words, "and not on information," in such section are only intended to exclude cases where an information on oath is required by statute.—*Reg. v. Justices of Torquay*, L.R. [1895] 1 Q.B. 11; 71 L.T. 574; 43 W.R. 59.

### Landlord and Tenant :—

- (v.) **Q. B. D.**—*Compensation for Improvements—Breach of Covenant—Summary Proceedings—Agricultural Holdings Act, 1883, ss. 6, 24.*—Where a tenant has made a claim for improvements, and the landlord has counter-claimed for breach of covenant, and the arbitrator has awarded that a balance is due to the landlord, the landlord cannot use the summary procedure of the Act to recover the balance.—*Holmes v. Formby*, 43 W.R. 205.
- (vi.) **Q. B. D.**—*Notice of Determination of Lease.*—A tenant, having power to determine his lease, wrote to his landlord that he considered the rent too high, and that he should not be able to stop unless some reduction was made, and said, "I give you an early intimation of this so that you may have ample time to consider what course you would like to adopt." *Held*, that this was a sufficient notice to determine the lease.—*Jury v. Thompson*, 43 W.R. 203.

### Licensing :—

- (vii.) **H. L.**—*Transfer—Misconduct—Expiration.*—Decision of C. A. (*see* Vol. 19, p. 120, ii.) affirmed.—*Freer v. Murray*, L.R. [1894] A.C. 576; 63 L.J. M.C. 242; 71 L.T. 444.

**Limitations:—**

- (i.) **Ch. D. Mortgage—Proviso for Redemption—Arrears of Interest—Reversion.**—A mortgage of a reversionary share of the proceeds of realty and personality in Court contained a proviso for redemption upon payment, on or before the death of the tenant for life, of the principal sum, with "interest for the same in the meantime" at a specified rate. There were distinct covenants for payment of the principal on the death of the tenant for life, and of interest in the meantime; but the proviso did not refer to those covenants. When the tenant for life died thirteen years' interest was unpaid. *Held*, that the proviso for redemption was a distinct contract, and that the mortgagee's right to the whole of the interest was not affected by any statute of limitations or rule of equity.—*Turner v. Spencer*, 43 W.R. 153.

**Local Government:—**

- (ii.) **Q. B. D. —Borough—Clerk to Justices—County Fund—Fees—Local Government Act, 1888, s. 84.**—The county council must pay the salary of the clerk to the justices of a borough in the county, which has a population of under 10,000, and a separate commission of the peace; and all fees and costs payable to such clerk, and not excluded in fixing his salary, are to be paid to the county fund.—*Herefordshire County Council v. Town Council of Leominster*, L.R. [1895] 1 Q.B. 43; 71 L.T. 576.
- (iii.) **Q. B. D.—Building Line—"Building on either Side in same Street"—Public Health Act, 1888, s. 3.**—A house was built by J. at the side of a road where there were no other houses. He afterwards proposed to build cottages on the same side of the road, thirty yards from such house. *Held*, that the local authority could not prescribe a building line by reference to the wall of the house.—*Reg. v. Ormesby Board of Health*, 43 W.R. 96.
- (iv.) **Q. B. D.—Drainage—Sewer—Duty of Local Authority—Public Health Act, 1875, s. 15.**—There was a drain which carried off surface water and sink water from the defendant's house amongst others. He and other owners of houses, without the knowledge of the local authority, connected water closets with the drain. This caused a nuisance, and the local authority preferred a complaint against the defendant, but did not prove that he alone caused the nuisance. *Held*, that the authority were in default in not providing proper drainage for the district, and could not transfer the obligation to do so to the individual inhabitants.—*The Wycombe Union v. Parsons*, 71 L.T. 428.
- (v.) **Q. B. D.—Licence for Music and Dancing—County Council—Bias—Validity of Proceedings.**—It appeared that P., a county councillor, had, previously to an appeal to the county council against a decision of the council's licensing committee, which was adverse to a licence, attended a meeting of persons who opposed the licence. He was alleged to have joined in discussing the evidence to be adduced, but stated that he had taken no part in the discussion except telling the meeting the course of procedure to be adopted. It did not appear that P. affected the decision of the council otherwise than by his vote. *Held*, that he was not so far biased as to invalidate the proceedings of the council.—*Reg. v. London County Council*, 71 L.T. 638.
- (vi.) **Q. B. D.—Nuisance—Abatement—"Owner"—Public Health (London) Act, 1891, s. 141.**—Where the lessee of premises, not held at a rack-rent, has sub-let them for the remainder of the term, less a few days, the rent and covenants being the same as in the original lease, the sub-

lessee, and not the lessee is the "owner" within the meaning of the section above-mentioned.—*Truman, Hanbury, Buxton & Co. v. Kerlake*, L.R. [1894] 2 Q.B. 774; 63 L.J. M.C. 222; 43 W.R. 110.

- (i.) **Q. B. D.**—*Nuisance—Sewers—Duty of Local Authority to Provide—Liability of Owner of Property—Public Health Act, 1875, ss. 13, 15, 94, 95, 96.*—X. and others, without the knowledge of the sanitary authority, more than twenty years ago connected their water-closets with a drain belonging to such authority, being the only available drain. A nuisance was caused thereby, and the authority took proceedings against X. to obtain an abatement. It was not proved that his sewage alone caused the nuisance. The authority had not carried out any system of sewerage in their district. *Held*, that as the authority were under the obligation to provide the sewers necessary for their district, they could not evade their obligation by proceeding against X., and that the justices were right in dismissing the complaint.—*Fordom v. Parsons*, L.R. [1894] 2 Q.B. 780.
- (ii.) **Q. B. D.**—*Urban Authority—County Council—Main Roads—Arbitration as to Payment—Local Government Act, 1888, ss. 11, 35.*—Where an urban authority has claimed to retain the powers and duties of maintaining the main roads within its district, the amount to be paid to such authority by the county council in respect of such roads can only be settled, in default of agreement, by the arbitration of the Local Government Board.—*In re Bedfordshire County Council and Bedford Urban Sanitary Authority*, L.R. [1894] 2 Q.B. 786; 64 L.J. Q.B. 26; 71 L.T. 433.
- (iii.) **Ch. D.**—*Waterworks—Restriction on Construction—Public Health Act, 1875, ss. 4, 51, 52.*—Where a local authority has, previously to the incorporation of a water company in its district, substantial waterworks already in existence, it is not bound to give notice to the company before commencing additions to such works.—*Cleveland Water Co v. Redcar Local Board*, 64 L.J. Ch. 64; 43 W.R. 90.

See Married Woman, p. 46, i.

### Lunatic:—

- (iv.) **C. A.**—*Affidavit—Inspection—Annexed Documents—Discharge of Committee—Deceased Lunatic.*—When an affidavit is filed which refers to documents as "annexed" thereto, any person entitled to see the affidavit is entitled to see the documents, though they are not actually annexed. The executor of a deceased lunatic asked that the committee should be ordered to deliver up certain documents relating to the lunatic's estate. The committee had not received a final discharge. *Held*, that the application was premature.—*In re Hinchliffe*, 64 L.J. Ch. 76; 71 L.T. 532; 43 W.R. 82.
- (v.) **C. A.**—*Practice—Stockholder—Dividends—Receiver—Lunacy Act, 1870, ss. 108, 116, 146, 333.*—The judge or a master in lunacy may appoint a receiver of dividends on stock standing in the Bank of England in the name of a person who is "through mental infirmity arising from disease or age, incapable of managing his affairs." But in the absence of special reason to the contrary, it is better to bring the stock into Court.—*In re Browne*, L.R. [1894] 3 Ch. 412; 63 L.J. Ch. 729; 71 L.T. 365; 43 W.R. 175.

### Married Woman:—

- (vi.) **C. A.**—*Separate Estate—Restraint on Anticipation—Sequestration—Married Women's Property Acts, 1882, s. 1; 1893, ss. 1, 2.*—An order had been made for payment of costs by a married woman, tenant for life of real estate for her separate use without power of anticipation.

*Held*, that under a sequestration to enforce payment, rents due after the order for payment, but before the issue of the writ of sequestration, could not be taken. The 2nd section of the Act of 1893 does not apply to an order for payment of costs made before the Act came into operation.—*E. p. Hood-Barra; in re Lumley*, L.R. [1894] 3 Ch. 135.

- (i.) **Q. B. D.**—*Rates—Recovery of—Compounding—Poor Rate Assessment Act, 1869, ss. 3, 4—Summary Jurisdiction Acts, 1879, 1884—Interpretation Act, 1889—Married Women's Property Act, 1882, s. 1.*—A married woman, owner of houses in the metropolis, gave notice of her wish to compound for the rates. She was allowed the consequent deductions from the rates, but made default in payment of general rates, which are recoverable in the same manner as poor rates. *Held*, that she had made no such contract with the overseers as to bring the case within the Married Women's Property Act, 1882, and that she was liable to the ordinary remedy for the recovery of poor rates—namely, distress and imprisonment in default of sufficient distress.—*In re Allen*, L.R. [1894] 2 Q.B. 924; 63 L.J. M.C. 267; 43 W.R. 141.

### **Metropolis Management:—**

- (ii.) **Q. B. D.**—*"Drain"—"Sewer"—Liability to Repair—Metropolis Management Act, 1855, s. 250.*—P. owned two blocks of buildings containing several sets of apartments, separated by a causeway twenty feet wide, which opened into a public street. Access to one block was from the causeway, and to the other from the street. There was a dust-bin in the causeway for the common use of the inhabitants of both blocks. The blocks were drained by branch drains running into a main drain. *Held*, that such drain was used for "premises within the same curtilage," and was a "drain" and not a "sewer," and that P. was liable to repair it.—*Pillbrow v. Vestry of St. Leonard, Shoreditch*, L.R. [1895] 1 Q.B. 33; 71 L.T. 697.
- (iii.) **C. A. & Q. B. D.**—*Drainage—Lowther Arcade—Drain—Sewer—Metropolis Management Act, 1854, ss. 68, 69, 250.*—The Lowther Arcade is drained by a pipe running down the centre of the Arcade. *Held*, that the pipe was not a "drain" but a "sewer"; that the Arcade was not "one building" or "premises within the same curtilage"; and that the local authority was liable for the repair of the sewer.—*Vestry of St. Martin-in-the-Fields v. Bird*, 71 L.T. 432; 43 W.R. 8 and 194.
- (iv.) **Q. B. D.**—*Duty to Clear Footways—Neglect of Public Health (London) Act, 1891, s. 29.*—A person injured owing to the neglect of a sanitary authority to clear frozen snow from a footway, has no right of action against them.—*Saunders v. Holborn Board of Works*, L.R. [1895] 1 Q.B. 64; 71 L.T. 519; 43 W.R. 26.
- (v.) **Q. B. D.**—*Footway—Flagging—Land Extra commercium—Owner—Metropolis Management Acts, 1855, s. 250; 1890, s. 1.*—A local authority had, under the Metropolis Open Spaces Act, 1877, acquired the lease of a piece of land for a public garden. *Held*, that they were owners, and liable to contribute towards the expenses of flagging the adjoining footways.—*Vestry of St. Mary's, Islington v. Cobbett*, 71 L.T. 573; 43 W.R. 47.
- (vi.) **Q. B. D.**—*Height of Building—Continuing Offence—Metropolis Management Act, 1862, ss. 85, 107.*—The respondent employed builders to erect a house which was higher than allowed by the Act. In October, 1892, the county council served a notice on the builders requiring them to comply with the Act, and the notice came to the knowledge of the respondent. In February, 1893, the builders gave the respondent possession. In December, 1893, the county council gave notice to the respondent to comply with the Act. In March, 1894, they

summoned him for continuing the building on December 31st, 1893, and on each succeeding day to the date of the summons. *Held*, that he ought to be convicted, as the Act made the continuing of the building an offence, so that neither the fact that no conviction had been obtained for the erection, nor the lapse of six months after its erection or its discovery by the council without such conviction being obtained, prevented the recovery of penalties for continuing the building.—*London County Council v. Wivley*, L.R. [1894] 2 Q.B. 826; 68 L.J. M.C. 218; 71 L.T. 487; 43 W.R. 11.

- (i.) **Q. B. D.**—"Owner"—"Occupier"—*Liability for Paving*—*Metropolis Management Act, 1855*, ss. 105, 250.—A lessee who has sub-let at the same rent as he pays, and derives no profit from the rent, though he receives it from the occupier, is not liable to contribute as "owner" to the expenses of paving.—*Walford v. Hackney Board of Works*, 43 W.R. 110.
- (ii.) **Q. B. D.**—*Vestryman—Qualification—Loss of*—A vestryman who is properly qualified at the time of his election does not cease to be a member of the vestry before the expiration of his term of office because he had ceased to occupy a house in the parish.—*Reg. v. Williams*, 43 W.R. 140.

### Mine:—

- (iii.) **Q. B. D.**—*Examinations of Mines—Reports*—The examination required by the Coal Mines Regulation Act, 1887, s. 49, r. 5, to be made every day must be reported and recorded, as well as that directed to be made every week.—*Scott v. Bould*, L.R. [1895] 1 Q.B. 9; 64 L.J. M.C. 16; 71 L.T. 577.

### Mortgage:—

- (iv.) **Q. B. D.**—*Attornment—Death of Mortgagor—Occupation by Heir-at-Law—Right to Distrain*—A mortgage deed contained a clause of attornment. The mortgagor died, and his heir-at-law succeeded to the mortgaged premises, and continued to pay the interest. *Held*, that there was no relation of landlord and tenant between the mortgagee and the heir-at-law, and that the former would not distrain for arrears of interest.—*Scobie v. Collins*, 64 L.J. Q.B. 10.
- (v.) **C. A.**—*Consolidation*—Decision of Ch. D. (see Vol. 19, p. 130, i.) affirmed.—*Pledge v. Carr*, L.R. [1895] 1 Ch. 51; 64 L.J. Ch. 51; 71 L.T. 598; 43 W.R. 50.
- (vi.) **H. L.**—*Purchase of Equity of Redemption—Merger—Intention*—A solicitor acted for all parties in mortgage transactions. A mortgage was executed in favour of A., and a second mortgage to the appellant. The solicitor undertook in each case either to take a transfer of the securities, or to make good any deficiency on realisation. The mortgagor became bankrupt, and the solicitor purchased the equity of redemption. The solicitor paid off A. with a loan obtained from his banker, and took a transfer of A.'s mortgage, which he deposited with the banker. Afterwards the respondent made the solicitor an advance and took a transfer of the mortgage. *Held*, that there was no merger of A.'s mortgage with the equity of redemption, and that it retained its priority over the appellant's mortgage.—*Thorne v. Cann*, 64 L.J. Ch. 1. See Limitations, p. 44, i.

### Nuisance:—

- (vii.) **H. L.**—*Adjoining Owners—Overhanging Tree—Right to Cut*—Decision of C. A. (see Vol. 19, p. 132, iii.) affirmed.—*Lemmon v. Webb*, 71 L.T. 647.



- (i.) **Ch. D.**—*Injunction—Noise caused by Two or More Persons.*—The acts of two or more persons may, taken together, constitute such a nuisance that an injunction will be granted against all, although the annoyance caused by the act of any one of them taken alone would not amount to a nuisance.—*Lambton v. Mellish*; *Lambton v. Cox*, L.R. [1894] 3 Ch. 168; 63 L.J. Ch. 929; 71 L.T. 385; 43 W.R. 5.

### Partnership:—

- (ii.) **Ch. D.**—*Dissolution—Parties—Rights of Persons Nominated to succeed to Shares.*—Partnership articles between five persons provided that each might nominate a son to succeed to his share, but that no son so nominated should succeed till he attained twenty-one. The power was exercised. An action was commenced for dissolution, and the defendant applied to stay all proceedings until the nominated sons (who were all under twenty-one) were made parties. *Held*, that the sons were not necessary parties, and that the clause in question did not prevent the partners from dissolving the partnership.—*Ehrmann v. Ehrmann*, 43 W.R. 125.
- (iii.) **H. L.**—*Retiring Partner—Liability of—Overdraft—Principal and Surety—Release.*—Decision of C. A. (see Vol. 19, p. 94, v.) affirmed.—*Rouse v. Bradford Banking Co.*, L.R. [1894] A.C. 586; 64 L.J. Ch. 890; 71 L.T. 522; 43 W.R. 79.

### Patent:—

- (iv.) **C. A.**—*Exclusive Licence—Power to Revoke—Breach of Covenants—Deviation—Rectification.*—Decision of Ch. D. (see Vol. 20, p. 26, iv.) affirmed.—*Guyot v. Thomson*, L.R. [1894] 3 Ch. 888; 64 L.J. Ch. 32; 71 L.T. 416.
- (v.) **P. C.**—*Prolongation—Expiration of Foreign Patents—Patents, &c., Act, 1883, s. 25, sub-s. 4.*—A foreign invention first patented in England after the passing of the Act may be dealt with under the section above-mentioned on the footing that the Patent Law Amendment Act, 1852, has been repealed with respect to it. The lapse or expiration of foreign patents are circumstances to be considered with reference to the question of extending a British patent, but are not conclusive against such extension.—*In re Semet and Solway's Patent*, 71 L.T. 674.

### Poor Law:—

- (vi.) **Q. B. D.**—*Outdoor Relief—Re-imbursement of Guardians—Ordinary Creditors—Poor Law Act, 1849, ss. 16, 17.*—A pauper received outdoor relief. At her death she left a will dealing with certain property, and appointing a creditor as executor. *Held*, that the guardians were not preferential creditors with respect to their claim for re-imbursement, and were not entitled to "take and appropriate" the property of the deceased.—*Laver v. Bootham*, L.R. [1895] 1 Q.B. 59; 71 L.T. 570; 43 W.R. 25.
- (vii.) **H. L.**—*Rating—Docks—Different Parishes—Hypothetical Tenant.*—Decision of C. A. (see Vol. 19, p. 133, ii.) affirmed.—*Hull Docks Co. v. Sculbates Guardians*, 71 L.T. 642.
- (viii.) **C. A.**—*Rating—Exclusive Occupation—Canal.*—Decision of Q. B. D. (see Vol. 19, p. 52, i.) affirmed.—*Doncaster Assessment Committee v. M.S. & L.R.*, 71 L.T. 585.
- (ix.) **H. L.**—*Rating—Valuation List—Valuation (Metropolis) Act, 1869, s. 32.*—An appeal against the "total of the gross value" or "the total of the rateable value" of a parish under the section above mentioned, cannot be preferred on the ground that the valuation of individual

hereditaments is incorrect.—*London County Council v. Assessment Committee of St. George's, Hanover Square*, L.R. [1894] A.C. 600; 64 L.J. Q.B. 48; 71 L.T. 409.

**Power:—**

- (i.) **Ch. D.**—*Special Power—General Bequest—Evidence of State of Property—Admissibility.*—A testatrix had a special power of appointment in favour of her children. She directed by will that "all my property of every kind" should be divided amongst them in certain shares, but made no reference to the power. *Held*, that the power was not exercised, and that evidence of the state of her property was not admissible to shew her intention.—*Irruno v. Eyston*, L.R. [1894] 3 Ch. 595; 43 W.R. 139.

**Practice:—**

- (ii.) **C. A.**—*Appeal—Time for—Interlocutory or Final Order*, R.S.C., 1888, O. lviii., r. 15.—*Rules of Court*, November, 1893.—An order in an administration action directing that certain payments might be made to an annuitant, and adjourning further consideration, though it finally settled the construction of the clause, *held*, to be interlocutory and not final, so that an appeal against it, not brought within fourteen days, was out of time.—*Long v. Gardner*, 71 L.T. 412.
- (iii.) **C. A.**—*Appeal—Leave—Judicature Acts*, 1873, s. 52; 1894, s. 1 (b).—The leave of the Court of Appeal or a judge thereof for appealing from an interlocutory order made by a judge need not be obtained for an application to vary or discharge an interim order made under the section first mentioned.—*Boyd v. Bischoffsheim*, L.R. [1895] 1 Ch. 1; 71 L.T. 531; 43 W.R. 36.
- (iv.) **C. A.**—*Compromise—Approval of—Absent Persons*—R.S.C., 1888, O. xvi., r. 9a.—The Court may approve of a compromise between the parties to an action, and make it binding on absent persons who have not assented. But it cannot bind absent persons who have dissented, and if it sanction the compromise will only do so on terms of making provision for satisfying the claims of the dissentients.—*Collingham v. Sloper*, L.R. [1894] 3 Ch. 716; 71 L.T. 456.
- (v.) **Ch. D.**—*Contempt of Court—Notice of Motion—Service*—R.S.C., 1888, O. xlv., r. 2; O. lxvii., r. 4.—Leave to issue a writ of attachment against a defendant who had not appeared, but had failed to obey an order to leave accounts at chambers, was refused, as the notice of motion had not been served on him personally, but had been filed.—*Bassett v. Bassett*, L.R. [1894] 3 Ch. 179; 63 L.J. Ch. 844.
- (vi.) **Ch. D.**—*Costs—Taxation—Immaterial Witness—Discretion of Taxing Master.*—The Court will not interfere with the discretion of the taxing master as to allowing or disallowing the expenses of a witness, unless satisfied that the master has not properly considered the matter.—*Oliver v. Robins*, 43 W.R. 137.
- (vii.) **C. A.**—*County Court—Action Remitted—Counter-claim—Unliquidated Damages—County Courts Act*, 1855, s. 65.—Decision of Q. B. D. (see Vol. 20, p. 18, v.) affirmed.—*Guilford v. Lambeth*, L.R. [1895] 1 Q.B. 92; 43 W.R. 97.
- (viii.) **Q. B. D.**—*Discovery—Documents Relating to Amount of Damages*—R.S.C., 1888, O. xxxi., r. 4.—Where the question of the defendant's liability can be separated from that of the amount of damages, the Court will not order the production of documents which only relate to the amount of damages until the question of liability has been decided.—*Schreiber v. Heyman*, 63 L.J. Q.B. 749.

- (l.) **C. A.**—*Discovery—Interrogatories—Objections to—R.S.C., 1883, O. xxxi., rr. 1, 6.*—The allowance by the judge of interrogatories to be administered leaves the party free to take any objection to answering which he might otherwise have taken. A. and R. were defendants as executors of W., and R. was also a defendant in his own interest. A. was, by an order made in the administration of W.'s estate, appointed to defend on behalf of the estate. *Held*, that such appointment did not affect the plaintiff's right to interrogate R.—*Peek v. Ray*, L.R. [1894] 3 Ch. 282.
- (ii.) **C. A.**—*Equitable Execution—Receiver.*—Since the Judicature Acts the Court has jurisdiction to grant equitable execution by appointing a receiver of an equitable reversionary interest in personalty.—*Tyrrell v. Painton*, 71 L.T. 687; 43 W.R. 163.
- (iii.) **C. A.**—*Evidence—Foreign Defendant—Temporarily within Jurisdiction—Commission.*—A domiciled foreigner was served with the writ of summons while on a temporary visit to England. He paid a second visit to England, but returned to his home. *Held*, that he was entitled to a commission to take his evidence abroad.—*New v. Burns*, 71 L.T. 681; 43 W.R. 182.
- (iv.) **C. A.**—*Evidence—Judgment Debtor—Examination as to Means—Expenses—Attachment—Service of Copy of Affidavit.*—A judgment debtor attending before a master for examination under O. xlii., r. 32, is only entitled to such sum for his expenses as the master may think reasonable. Where, on an application for a writ of attachment, the party shewing cause objected that he had not been served under O. lii., r. 4, with a copy of the affidavits to be used, and the Judge allowed an adjournment to enable him to answer them, and on the adjourned hearing ordered the writ to issue, the Court of Appeal refused to set it aside for non-compliance with O. lii., r. 4.—*Rendell v. Grundy*, L.R. [1895] 1 Q.B. 16; 71 L.T. 514; 43 W.R. 50.
- (v.) **Ch. D.**—*Evidence—Company—Winding-up—Misfeasance Proceedings—Deposition taken at Public Examination—Companies (Winding-up) Act, 1890, s. 8, sub-s. 7, s. 26—Rules, 1892, r. 27.*—The rule above mentioned is not invalid, as it does not lay down that the deposition referred to is to be treated as absolute evidence against persons other than the deponent, but only (in effect) as an affidavit upon which the deponent may be cross-examined.—*In re London & General Bank*, 68 L.J. Ch. 858.
- (vi.) **C. A.**—*Evidence—Documents—Evidence en bloc—Report of Referee—Motion to Vary.*—Decision of Ch. D. (see Vol. 20, p. 19, ii.) affirmed.—*In re The Maplin Sands*, 71 L.T. 594.
- (vii.) **Ch. D.**—*Motion to Discharge Order in Chambers.*—The power of a judge of the Chancery Division to hear a motion to discharge an order made in chambers is not affected by the Supreme Court of Judicature Act, 1894.—*Boake Roberts & Co. v. Stevenson and Howell*, 71 L.T. 722; 63 W.R. 189.
- (viii.) **C. A.**—*Order Passed and Entered—Jurisdiction to Re-hear.*—When an order has been perfected there is no jurisdiction to re-hear the matter and make a new order or alter the former one, although the order is wrong by reason of some misrepresentation or mistake of fact.—*Preston Banking Co. v. Allsup and Sons*, 71 L.T. 708.
- (ix.) **C. A.**—*Originating Summons—Payment into Court of Money in Hands of Trustees.—R.S.C., 1883, O. lv., r. 3 (d).*—The rule above mentioned is confined to money actually in the hands of the trustees, and does not extend to money formerly in their hands, but subsequently misapplied.—*Nutter v. Holland*, L.R. [1894] 3 Ch. 408; 63 L.J. Ch. 932; 71 L.T. 508; 43 W.R. 18.

- (i.) **Ch. D.**—*Parties—Striking Out—Pleading.*—A tenant in common brought an action for partition or sale, and joined as co-defendants the mortgagees of the entirety, and the mortgagee of his own undivided share. On action by the mortgagor, the action was dismissed as against the mortgagee of the entirety on the ground that there was no reasonable cause of action, and as against the mortgagees of the plaintiff's share on the ground that the mortgagee did not concur.—*Sinclair v. James*, L.R. [1894] 3 Ch. 584; 63 L.J. Ch. 873; 71 L.T. 483.
- (ii.) **Ch. D.**—*Payment into Court—Satisfaction of Counter-claim*—*R.S.C.*, 1883, O. xxii., r. 4.—The plaintiff desired to pay money into Court in satisfaction of a claim made in the counter-claim, but the Paymaster-General refused to receive the money on the ground that the printed form of request for lodgment of money did not contain any statement applicable to the circumstances. On summons by the plaintiff, *Held*, that he was entitled to pay the money in, and that a statement applicable to the circumstances should be inserted in the printed form.—*Hutchinson v. Barker*, 71 L.T. 525.
- (iii.) **C. A.**—*Payment into Court—Verdict for Smaller Sum—Power to Order Re-Payment of Balance*—*R.S.C.*, 1883, O. xxii., r. 5 (b).—When the defendant does not deny liability, but pays money into Court, and the plaintiff recovers a verdict for a smaller sum, the judge may order the sum awarded to be paid to the plaintiff, and the balance of the money paid in to be paid to the defendant.—*Gray v. Bartholomew*, 43 W.R. 177.
- (iv.) **Ch. D.**—*Receiver—Surety—Extent of Liability.*—A receiver of the rents and profits of real estate having made default, *held*, that the surety was liable for money received on a fire policy on buildings, part of the estate, for dividends on funds in Court, being proceeds of sale of real estate liable to re-investment, and for pure personalty paid out of Court to the receiver for repairs to the real estate, and not so applied; and also for the costs of removing the receiver and appointing a new receiver.—*Graham v. Noakes*, L.R. [1895] 1 Ch. 66; 71 L.T. 623; 43 W.R. 103.
- (v.) **C. A.**—*Service out of Jurisdiction*—*R.S.C.*, 1883, O. xi., rr. 1 (g), 2.—An action of deceit was brought against three joint defendants, two resident in England, and one in Scotland. *Held*, that the "comparative cost and convenience" was in favour of proceeding against the last defendant in the English action, and that service on him out of the jurisdiction ought to be allowed.—*Williams v. Cartwright*, L.R. [1895] 1 Q.B. 142.
- (vi.) **C. A.**—*Service out of Jurisdiction—Action of Tort*—*R.S.C.*, 1883, O. xi., r. 1 (g).—The discretion to allow service of a writ of summons out of the jurisdiction whenever any person out of the jurisdiction is a necessary and proper party to an action properly brought against some other person duly served within the jurisdiction, applies to an action of tort.—*Williams v. Cartwright*, 43 W.R. 145.
- (vii.) **P. D.**—*Salvage—Affidavit of Value—Evidence—Admission of.*—Where the plaintiff, in a salvage action in the county court, not having demanded an appraisement, disputes the value of the *res* as stated in the defendant's affidavit of value, and tenders evidence, the judge must exercise his discretion as to admitting or rejecting such evidence. The value of the *res* ought, as a general rule, to be proved by affidavit or appraisement, and not by evidence at the trial.—*The Argo*, 71 L.T. 640.  
See Will, p. 61, i.

**Principal and Agent:—**

- (i.) **Q. B. D.—Stockbroker—Running Stocks against Client.**—In an action by an outside broker against a client to recover the balance of account in respect of stocks and shares alleged to have been bought and sold for him, it appeared that the plaintiff appropriated stocks which he already held to the client's account, without his knowledge. *Held*, that the broker had made no contracts for the client, and could not recover differences or commissions. It also appeared that after buying stocks for the client, the broker without his knowledge sold and repurchased them, but charged the client with differences, as though such stocks had been kept open on his account. *Held*, that there had been no real continuing contract in existence for the benefit of the client, and that no real differences had arisen which could be recovered.—*Skelton v. Wood*, 71 L.T. 616.

**Railway:—**

- (ii.) **Q. B. D.—Bye-Law—Validity.**—A bye-law of a railway company provided a penalty for "any passenger using or attempting to use a ticket on any day for which such ticket is not available." The appellant used a ticket on a day for which it was not available, but without any fraudulent intention. *Held*, that in the absence of fraud he was not liable to be convicted, and that the bye-law was invalid.—*Huffam v. North Staffordshire Railway Co.*, L.R. [1894] 2 Q.B. 821; 63 L.J. M.C. 225; 71 L.T. 517; 43 W.R. 28.
- (iii.) **Railway and Canal Commission.—Costs—Taxation.**—Where costs are awarded upon an application to the Commissioners, the costs of three counsel will not be allowed, unless the case involves great complication and difficulty, and is one in which a reasonable and prudent man would employ three counsel. The chance of counsel being absent should be considered, but it should be assumed that all the counsel employed can attend throughout the hearing.—*Glanworgan County Council v. G.W.R.*, L.R. [1895] 1 Q.B. 21; 71 L.T. 736.
- (iv.) **C. A.—Land taken by Company—User of—Adjoining Owner.**—Where a railway is built upon arches, the leasing of the arches to tenants for short terms is not a user of the company's property which is incompatible with the purposes of their undertaking; and an adjoining owner, who sold to the company the land on which the arches are built cannot restrain the company from such user.—*Foster v. L.C. & D.R.*, 48 W.R. 116.
- (v.) **Ch. D.—Landowner—Covenants—Works—Personal Service—Transfer of Undertaking—Specific Performance.**—Where a railway company has, on the purchase of land, and as part of the consideration, covenanted with the vendor to provide accommodation works and do certain personal services, and then by Act of Parliament the company is dissolved, and the undertaking transferred to another, "subject to the obligations and liabilities" of the old company, the vendor can maintain an action against the new company for specific performance of the whole covenant.—*Fortescue v. Lostwithiel & Fowey Railway Co.*, L.R. [1894] 3 Ch. 621; 64 L.J. Ch. 37; 71 L.T. 423; 43 W.R. 138.
- (vi.) **Q. B. D.—Purchase of Land—Compensation—Minerals—Railways Clauses Act, 1845, ss. 77-80.**—The fact that a railway company has given notice to an owner to treat for land together with part of the minerals, namely, all the minerals except coal, does not entitle the owner to receive compensation for the coal which is necessary to be left for the support of the line before the time has arrived for working the same.—*In re Lord Gerard and L. & N.W.R.*, L.R. [1894] 2 Q.B. 915; 63 L.J. Q.B. 764; 71 L.T. 548; 43 W.R. 9.

- (i.) **C. A.**—*Reasonable Facilities for Traffic*.—Decision of Railway Commission (see Vol. 19, p. 100, i.) reversed.—*Darlaston Local Board v. L. & N.W.R.*, 63 L.J. Q.B. 826; 71 L.T. 461; 43 W.R. 29.

**Receiver:—**

- (ii.) **C. A.**—*Liability of Receiver and Manager of Business*.—A person appointed by the Court receiver and manager of a business is *prima facie* personally liable on contracts entered into by him as receiver and manager, and must look to the assets for an indemnity.—*Burt, Bolton & Hayward v. Bull and Ward*, 43 W.R. 180.

**Registration:—**

- (iii.) **Q. B. D.**—*Appeal from Revising Barrister*.—No appeal lies from a decision of a revising barrister upon the validity of a notice given by an elector, under the Parliamentary and Municipal Registration Act, 1878, s. 28, sub-s. 14, in the case of duplicate entries of his name upon the list of voters of a borough, selecting the entry to be retained for voting.—*Reg. v. Chadwick*, L.R. [1895] 1 Q.B. 155; 71 L.T. 636.
- (iv.) **Q. B. D.**—*Lodger's Claim—Amendment—Power of Revising Barrister—Parliamentary and Municipal Registration Act, 1878, ss. 22, 28, sub-s. 2*.—A claim to be on the lodgers' list of voters was duly sent in to the overseers, the name of the parliamentary borough being omitted. In the declaration accompanying the claim the claimant stated that he was on the list of parliamentary voters for "the said parliamentary borough" in respect of the same lodgings. The revising barrister refused to amend the claim by inserting the name of the borough, and expunged the claimant's name from the list. *Held*, that he had power to make the amendment, and ought to have done so.—*Treadgold v. Town Clerk of Grantham*, L.R. [1895] 1 Q.B. 163; 64 L.J. Q.B. 29; 71 L.T. 729.
- (v.) **Q. B. D.**—*Two Names on List in respect of one Property*.—The mere fact that a person whether qualified or not is on the register in respect of certain premises, is not enough to keep off a person who is properly qualified in respect of the same premises.—*Warren v. Maule*, 71 L.T. 731.

**Restraint of Trade:—**

- (vi.) **H. L.**—*Contract—Validity—Unlimited in Space*.—Decision of C. A. (see Vol. 18, p. 97, iii.) affirmed.—*Nordenfeldt v. Maxim-Nordenfeldt Guns and Ammunition Co.*, L.R. [1894] A.C. 535; 63 L.J. Ch. 908; 71 L.T. 489.

**Revenue:—**

- (vii.) **C. A.**—*Account Duty—Voluntary Disposition—Release of Mortgage Debt—Benefit to Donor—Customs, &c., Acts, 1881, s. 38, sub-s. 2 (a); 1889, s. 11, sub-s. 1*.—A mortgagee obtained an order for foreclosure, but before it became absolute, by an arrangement between the mortgagor, the mortgagee, and the defendant, the mortgagee's son, the mortgagor conveyed the premises to the defendant in fee simple, and the defendant covenanted to pay the mortgagee an annuity during his life. Upon the death of the mortgagee account duty was claimed upon the amount of the mortgage debt. *Held*, that there was a "gift" of the mortgage debt to the defendant, and by reason of the covenant to pay the annuity there was a "benefit to the donor by contract," such "benefit" not being confined to a benefit or reservation out of the subject-matter of the gift, and that, as the mortgage debt was personal property, the account duty was payable.—*Attorney-General v. Worrall*, L.R. [1895] 1 Q.B. 99; 43 W.R. 118.

- (i.) **Q. B. D.**—*Account Duty—Voluntary Disposition—Marriage Settlement—Children of Former Marriage—Customs and Inland Revenue Acts, 1881, s. 38, sub-s. 2; 1889, s. 11.*—Where a widow settles her property on a second marriage, her children by her former marriage are within the marriage consideration, and limitations in their favour are not "voluntary dispositions."—*Attorney-General v. Jacobs-Smith*, 71 L.T. 725.
- (ii.) **Q. B. D.**—*Excise—Proceedings to Recover Penalties—Summary Jurisdiction—Proof of Authority*—7 & 8 Geo. 4, c. 53, s. 71—*Inland Revenue Act, 1890, ss. 21, 24.*—Where proceedings to recover an excise penalty are taken by an Inland Revenue officer before a court of summary jurisdiction, an allegation in the information that the officer is prosecuting by the order of the commissioners is sufficient proof of such order, the provisions of the former Act not being impliedly repealed by the latter Act.—*Dyer v. Tulley*, L.R. [1894] 2 Q.B. 794; 63 L.J. M.C. 272; 43 W.R. 61.
- (iii.) **C. A.**—*Income Tax—Assessment—Appeal Against—Right to be put upon Oath.*—X. appealed against his income tax assessment. He sent in accounts, and tendered himself for examination on oath for the purpose of verifying them. The commissioners refused to put him upon oath, and upon the evidence rejected the appeal. He obtained a rule nisi for a mandamus to the commissioners to hear and determine the matter, or to state a special case. *Held*, that the decision of the commissioners was merely on a question of fact, and that even if there was a question of law in the contention that X. was entitled to be put upon oath, and that his oath would be conclusive, it was not one in respect of which a mandamus ought to be granted.—*Reg. v. Chew*, 71 L.T. 541.
- (iv.) **C. A.**—*Income Tax—Trade Exercised in United Kingdom—Agent.*—R., a French wine merchant, employed G. as his agent in this country to obtain orders. The wine was sent from France direct to the customers. The invoices were made out by R., and sent to G., who sent them to the customers. The purchase-money was generally sent direct to R., and in all cases the receipts were made out by R., and sent by him to the customers. *Held*, that R. exercised a trade in this country and was assessable in the name of G. as his agent.—*Grainger & Son v. Gough*, L.R. [1895] 1 Q.B. 71; 43 W.R. 184.
- (v.) **Q. B. D.**—*Income Tax—English Company—Business Abroad—Profits not remitted to England.*—Two English companies carried on business abroad. The profits were all earned abroad in both cases. In one case the board of directors in England made the contracts for the supply of materials. *Held*, that the companies were liable to pay income tax only on such part of the profits as was remitted to England for distribution, and not on the sums retained and distributed as dividends abroad.—*Denver Hotel Co. v. Andrews*; *San Paulo Railway Co. v. Carter*, 43 W.R. 109.

#### Settled Estate :—

- (vi.) **Ch. D.**—*Statutory Power of Sale—Authority to Exercise—Female Trustees—Settled Estates Act, 1887.*—Authority to exercise the statutory power of sale was given to two ladies, the trustees of a will, limited to their joint lives, upon evidence that the petitioners had been unable to find any other suitable trustees.—*In re Peake's Settled Estates*, L.R. [1894] 3 Ch. 520; 71 L.T. 371.

#### Settled Land :—

- (vii.) **C. A.**—*Sale of Land—Costs—Settled Land Act, 1882.*—Decision of Ch. D. (see Vol. 19, p. 139, vi.) reversed.—*Smith v. Lancaster*, L.R. [1894] 3 Ch. 439; 63 L.J. Ch. 842; 43 W.R. 17; 71 L.T. 511.

- (i) **C. A.**—*Building Lease—Settled Land Acts, 1882, s. 8, subs. 1; 1884, s. 7.*—A lease made partly in consideration of the outlay by the lessee of a specified sum in improvements is a building lease within the section first mentioned. The Court will not, in the exercise of its discretion under the latter section, sanction a building lease if the repairs or improvements agreed to be done by the lessor are such as an ordinary landlord is expected to do.—*In re Daniell's Settled Estates*, L.R. [1894] 3 Ch. 503; 71 L.T. 563; 43 W.R. 133.
- (ii) **Ch. D.**—*Glebe—Lands Clauses Act, 1845; Settled Land Acts, 1882, ss. 2, 21, 32; 1887, ss. 1, 2.*—An award under an Inclosure Act to a vicar "and his successors" does not constitute a settlement within sect. 2 of the Act of 1882. But the proceeds of sale of glebe land taken under compulsory powers, and paid into Court, may be dealt with under sect. 2 of that Act as "money liable to be laid out in the purchase of land to be made subject to a settlement."—*E. p. Vicar of Castle Bytham*, 64 L.J. Ch. 156; 71 L.T. 606.

### Settlement:—

- (iii) **Ch. D.**—*Marriage—After-acquired Property—Covenant to Settle.*—If income not originally included in an after-acquired property clause is invested so as to indicate an intention of the owner to treat it as capital, such investment becomes subject to the covenant. The same result follows in the case of a sale of capital property not originally included in the covenant, where the proceeds are laid out in the purchase of property coming within the terms of the covenant.—*Wallis v. Bendy*, L.R. [1895] 1 Ch. 109.
- (iv) **Ch. D.**—*Voluntary—Trust for Class—Period of Ascertaining.*—A fund was settled by voluntary deed upon such of the younger children of a third person as should attain twenty-one. *Held*, that no additions could be made to the class after one child had attained a vested interest, and that such child was entitled to be paid his share.—*Knapp v. Vassal*, L.R. [1895] 1 Ch. 91; 71 L.T. 625.

### Ship:—

- (v) **C. A.**—*Charter-Party—Demurrage.*—Lay days were to count from forty-eight hours after the arrival of the ship. The consignees allowed the discharge to begin in the afternoon of the day of arrival. *Held*, that "running days," in the clause providing for loading, meant calendar days and not periods of twenty-four hours, and that the whole of the first day was a lay day as the discharge had been allowed to begin.—*The Katy*, 71 L.T. 709.
- (vi) **C. A.**—*County Court—Appeal from—County Courts Admiralty Jurisdiction Act, 1868, ss. 26, 31—County Courts Act, 1888, s. 120.*—An appeal now lies on a question of law from the judgment of a county court in an admiralty action, though the amount of the judgment is less than £50, and though no security for costs has been given.—*Neptune Steam Navigation Co. v. Sclater & Procter*, 71 L.T. 544; 43 W.R. 65.
- (vii) **C. A.**—*Jurisdiction—Necessaries.*—The Court has jurisdiction over a claim for necessities supplied to a foreign ship in a foreign port, even though the port is not in the high seas.—*The Mecca*, 71 L.T. 711.
- (viii) **P. D.**—*Prohibition against Inferior Court—Injunction.*—A judge of the Admiralty Division has power to grant a prohibition with reference to a matter pending before an inferior Court, and to issue an injunction against a party proceeding in an inferior Court to restrain him from proceeding.—*The Teresa*, 71 L.T. 842.



- (i.) **P. D.**—*Practice—Jury—Assessors.*—In a collision action in a county court, where one party asks for a jury and the other demands assessors, the trial must be by judge and assessors.—*Kelly v. Isle of Man Steam Packet Co.*, 71 L.T. 731.
- (ii.) **P. D.**—*General Average.*—Where a ship has stranded and has been got off by means of her engines there must be a general average contribution for the coal used.—*The Bona*, 71 L.T. 551.
- (iii.) **C. A.**—*Insurance—Damage to Part of Goods—Costs of Examination.*—A cargo of iron in cases was insured free from average under three per cent., average to be recoverable on each package separately or on the whole. Some of the iron was damaged, and the whole of the cargo was examined. *Held*, that the underwriters were not liable for the costs of examination of the undamaged part of the cargo.—*Lysaght v. Coleman*, L.R. [1895] 1 Q.B. 49.
- (iv.) **C. A. & P. D.**—*Maritime Lien—Liabilities Incurred by Master—Mortgages—Priorities—Merchant Shipping Act, 1889, s. 1.*—The defendants, shipowners in London, contracted for the supply of coal to their ship then about to sail. Part of the payment was to be by bill of exchange drawn by the master on the defendants in favour of the seller. The bill so drawn was accepted but dishonoured, and the master issued a writ *in rem*, and arrested the ship, claiming the amount of the bill and charges, and the costs of an action against him as drawer. Prior mortgages intervened. *Held*, that the test of the disbursements or liabilities of the master in respect of which there was a lien, is whether they are such as would, without express authority, have pledged the owner's credit. In the present case there was no lien created to the prejudice of the interveners.—*Oriente*, L.R. [1894] P. 271; 63 L.J. P. 129; 71 L.T. 343 and 711.
- (v.) **C. A.**—*Narrow Channel—The Swin.*—The passage known as the Swin is a narrow channel, and every steamship navigating it must, when it is safe and practicable, keep to the starboard side of the channel.—*The Minnie*, L.R. [1894] P. 336; 71 L.T. 715.
- (vi.) **P. D.**—*Thames Rules—Dredging up—Stern Light.*—A steamer dredging up the Thames stern first on a dark night, to go into docks, and showing only her stern light to ships coming down, must keep a lookout up river, and give a sufficient signal when she sees a ship coming down.—*The Juno*, 71 L.T. 341.
- (vii.) **H. L.**—*Wreck—Obstruction—Liability of Owner—Harbour, &c., Clauses Act, 1847, s. 56.*—A ship was wrecked at the mouth of a river, and was abandoned by the owner. She became an obstruction and a danger to navigation. The River Commissioners accordingly, after notice to the owners, destroyed the obstruction, and sold the materials, and then sued the owners for the expenses. *Held*, that the owners were not liable.—*Arrow Shipping Company v. Tyne Improvement Commissioners*, L.R. [1894] A.C. 503; 63 L.J. P. 146; 71 L.T. 346.

### Solicitor:—

- (viii.) **Ch. D.**—*Costs—Mortgage of Leaseholds.*—On a mortgage of leasehold property held under several leases by the original lessee, his solicitors furnished the mortgagee's solicitors with a short statement of dates and particulars of the leases, which were all in the same form, and a form of the covenants. *Held*, that no title had been deduced, and that the solicitors were not entitled to the scale fee.—*W'elby v. Still*, L.R. [1894] 3 Ch. 691; 63 L.J. Ch. 931; 43 W.R. 73.

- (i.) **Ch. D.—Costs—Scale—Lease—Item Bill—General Order, August, 1882**—*Counterpart*.—A lease in writing for a term not exceeding three years at a rack-rent, or an agreement for the same is within Schedule I., Part II. of the General Order. The lessee on paying the bill of the lessor's solicitor is entitled to deduct the costs of the counterpart from the scale charge. The delivery of an item bill under Schedule II. for business to which Schedule I. applies does not entitle the party chargeable to insist on taxation under Schedule II.—*In re Negus*, L.R. [1895] 1 Ch. 73; 71 L.T. 716; 64 L.J. Ch. 79; 43 W.R. 68.
- (ii.) **Q. B. D.—Misconduct—Punishment—Discretion—Solicitors Act, 1843, s. 32.**—It having been proved that a solicitor has allowed an unqualified person to use his name, the Court has no discretion as to punishment, but must strike him off the rolls.—*In re Kelly*, 43 W.R. 191.
- (iii.) **C. A.—Partnership—Fraud of Partner—Liability.**—The plaintiff, a client of a firm of solicitors in which R. was a partner, was negotiating through R. for a loan from M., another client of the firm, on the security of land. R. falsely represented that M. required further security, and induced the plaintiff to hand him certain bonds, which he misappropriated. M. knew nothing about the bonds. The plaintiff sought to make M. and the partners of R. liable for the loss of the bonds. *Held*, that M. was not liable, as he had not authorised the inclusion of the bonds in the security; but that R's partners were liable as the transaction was a partnership matter.—*Rhodes v. Moules*, 71 L.T. 599; 43 W.R. 99.
- (iv.) **C. A.—Retainer—Agreement as to Conduct of Defence.**—X., the defendant in an action for infringement of a patent, agreed with M., the seller of the article complained of, that M. should conduct the defence and that his solicitor should be retained, X. being indemnified. X. retained M.'s solicitor to act "in the defence of the action and any appeals therefrom," and a deed of indemnity was executed. X. was defeated in the Court of Appeal. An appeal was presented to the House of Lords which X. wished to stop, and he withdrew the retainer. *Held*, that M. was entitled to an injunction to restrain X. from breaking his agreement and withdrawing his retainer. But a further indemnity against extra costs were ordered.—*Montforts v. Marsden*, L.R. [1895] 1 Ch. 11; 64 L.J. Ch. 52; 71 L.T. 620.

### Sunday Observance:—

- (v.) **C. A.—Lectures—Entertainment—Chairman and Keeper—Liability of—Lord's Day Act, 1781, ss. 1, 2.**—Decision of Q. B. D. (see Vol. 20, p. 26, i.) affirmed.—*Reid v. Watson*, 43 W.R. 161.

### Surety:—

- (vi.) **C. A.—Payment by Surety—Co-Surety—Right of Proof.**—Decision of Ch. D. (see Vol. 20, p. 18, v.) affirmed.—*Morgan v. Hull*, L.R. [1894] 3 Ch. 400; 64 L.J. Ch. 6; 71 L.T. 557; 43 W.R. 1.

### Tenant for Life:—

- (vii.) **Ch. D.—Settled Shares—New Shares allotted in respect of Old—Dividend.**—A company resolved that its capital should be increased, and an offer was made to each shareholder to apply one half of a dividend, which was declared shortly after, in payment for new shares then allotted to him, the amount to be paid in cash if he declined the allotment. The Court considered that there was no intention of capitalising the profits. Certain shares were subject to the trusts of a will, and

the trustees accepted the new shares allotted to them. *Held*, the tenant for life was entitled to so much of the value of the shares as represented the dividend declared, and that the balance ought to be treated as capital.—*Malam v. Hitchens*, L.R. [1894] 3 Ch. 578; 63 L.J. Ch. 797; 71 L.T. 655.

#### Tithes:—

- (i.) **Q. B. D.**—*Redemption Money—Valuer—Application by—County Court*—*Tithe Act*, 1891, s. 10, sub-s. 4.—A county court has jurisdiction to hear applications by a valuer duly appointed by the commissioners under the Tithe Acts for recovery of sums due in respect of redemption money.—*Reg. v. Patterson*, L.R. [1895] 1 Q.B. 31; 64 L.J. Q.B. 20; 71 L.T. 671; 43 W.R. 127

#### Title to Land:—

- (ii.) **Ch. D.**—*Possession and Acts of Ownership—Presumption*.—Long continued and uninterrupted possession and acts of ownership must be referred to a good title, provided, first, that the grant presumed must be good at law, and secondly, that no presumption is made which is contrary to proved fact.—*Elhot v. Mayor, &c., of Bristol*, 71 L.T. 659.

#### Trade Name:—

- (iii.) **C. A. & Ch. D.**—*Avoidance of Registration as Marks—Right to restrain User*.—The defendants having succeeded in compelling the words "Yorkshire Relish," which the plaintiff had registered as a trade-mark for sauces, to be taken off the register, began to label their sauces with those words. *Held*, that the plaintiff, having shewn that the trade previously knew that the words denoted his sauce, was entitled to restrain the defendants from using them without taking precautions to prevent purchasers from being misled.—*Powell v. Birmingham Vinegar Brewery Co.*, L.R. [1894] 3 Ch. 449; 71 L.T. 393.
- (iv.) **Ch. D.**—*Company—Calculated to Deceive—Affidavit—Striking out Paragraph*.—A foreign company trading in this country is entitled to restrain the use of a name so similar to its own as to be calculated to deceive customers. To state that the members of a plaintiff company are undischarged bankrupts is irrelevant to the action, and a paragraph in an affidavit containing such an allegation will be struck out.—*National Folding Box and Paper Co. v. National Folding Box Co.*, 43 W.R. 156.

#### Tramway:—

- (v.) **H. L.**—*Compulsory Purchase—Basis of Valuation*.—Decision of C. A. (see Vol. 19, p. 144, i.) affirmed.—*London Street Tramways Co. v. London County Council*; *Edinburgh Street Tramways Co. v. Lord Provost, &c., of Edinburgh*, L.R. [1894] A.C. 457; 63 L.J. Q.B. 769; 71 L.T. 801.

#### Trustee:—

- (vi.) **C. A.**—*Breach of Trust—Investment—Liability of Retiring Partner—Limitations*.—Decision of Ch. D. (see Vol. 19, p. 107, iv.) affirmed.—*Tucker v. Tucker*, L.R. [1894] 3 Ch. 429, 63 L.J. Ch. 737; 71 L.T. 453.

#### Vendor and Purchaser:—

- (vii.) **Ch. D.**—*Condition—Root of Title—Discovery of Prior Defect*.—A purchaser cannot make any objection in respect of a defect in the title discovered aliunde, which is prior to the document specified by the

conditions as the root of title, such conditions providing that the prior title shall not be "required, investigated, or objected to."—*In re National Provincial Bank and Marsh*, 71 L.T. 629; 43 W.R. 186.

- (i.) **Ch. D.**—*Interest on Purchase Money—Wilful Default—Damages for Delay*.—A contract provide for completion on 29th September, 1893, and for payment of interest in case of delay from any cause other than wilful default of the vendor. The title was accepted and the draft conveyance sent to the vendor, framed on the supposition that a necessary admittance and surrender had been made. On finding that it had not been done the purchaser wrote on 18th September requiring the vendor to take the necessary steps. Owing to the vendor's neglect the admittance was not completed till 14th December. The purchaser was ready to complete on 29th September, and paid the money into a bank, but possession was refused. He took out a summons for a declaration that he was not liable to pay interest, and that he was entitled to damages for loss caused by the delay in getting possession. *Held*, that there was wilful default on the part of the vendor, and that the purchaser was not liable to pay interest, but that damages could not be awarded on a summons.—*In re Wilson and Stephens*, L.R. [1894] 3 Ch. 546; 63 L.J. Ch. 863; 71 L.T. 388; 43 W.R. 23.

### Vestry:—

- (ii.) **Ch. D.**—*Rates—Illegal Expenses*.—A water company had been held entitled to make a special charge for supplying water to fixed baths in dwelling-houses. The defendants were restrained by the Court from applying money out of the rates of the parish in contributing towards the costs of persons who were desirous of trying the question a second time, or in doing anything to instigate or aid persons to resist payment of the charge.—*Attorney-General v. Camberwell Vestry*, 71 L.T. 478; 63 L.J. Ch. 878.

### Warehouseman.—See Bankruptcy, p. 34, iv.

### Waterworks:—

- (iii.) **Q. B. D.**—*Rate—Summons—Demand—Waterworks Clauses Act, 1847, ss. 70, 74, 85—Railways Clauses Act, 1845, s. 140*.—Where a summons has been taken out for arrears of water rate, it is not necessary as a condition precedent to the making of an order, that a demand should have been made for the amount before the issue of the summons.—*East London Waterworks Company v. Kyffin*, L.R. [1895] 1 Q.B. 55; 71 L.T. 615.
- (iv.) **Ch. D.**—*Water Company's District—Sewerage Works*.—The defendants were constructing sewerage works within the plaintiffs' district, and in connection therewith were sinking a well, and providing pumps and pipes for the purpose of flushing their sewers. *Held*, that these were not "waterworks" within the meaning of the Public Health Act, 1875, and that the defendants were entitled to construct and use them.—*West Surrey Water Company v. Chertsey Guardians*, L.R. [1894] 8 Ch. 513; 63 L.J. Q.B. 806; 71 L.T. 368; 43 W.R. 7.

### Weights and Measures:—

- (v.) **Q. B. D.**—*Coal in Sacks—Label—Representation of Seller—Weights and Measures Act, 1889, s. 29*.—A metal label attached to a sack of coal indicating that the sack when full contains half a hundredweight, constitutes a representation within the meaning of the section above

mentioned, that the sack when filled and delivered by the carter to the purchaser contains that weight of coal.—*Franklin v. Godfrey*, 63 L.J. M.C. 289; 43 W.R. 46.

### Will;—

- (i.) **Ch. D.**—*Bequest of Leaseholds upon Trusts—Repairs—Corpus or Income.*—Testator gave all his residue to trustees upon trust to receive the rents and profits, and in the first place to pay all the costs, charges, and expenses, and out of the balance to pay certain legacies and annuities, the latter to abate in case the balance should be insufficient. The residue included leaseholds, and the trustees, after notice from the lessors, executed repairs at a cost greater than the value of the remainder of the term. *Held*, that the cost of the repairs was payable out of income, and not out of corpus.—*Debney v. Eckett*, 71 L.T. 659; 43 W.R. 54.
- (ii.) **C. A.**—*Charity—Lapse—Cy-près.*—Decision of Ch. D. (see Vol. 20, p. 28, ii.) affirmed.—*Rymer v. Stanfield*, L.R. [1895] 1 Ch. 19; 71 L.T. 590; 43 W.R. 87.
- (iii.) **Ch. D.**—*Construction—Condition to Resettle—Money Liable to be Laid Out in Land.*—A testator gave his residue to A. on condition that A. should disentail and resettle property the subject to a settlement, and of which A. was tenant in tail. The property comprised money liable to be laid out in land. *Held*, that to comply with the condition such money must be included in the resettlement.—*Dassett v. St. Levan*, 71 L.T. 718; 43 W.R. 165.
- (iv.) **C. A.**—*Construction—Power or Trust—Release of.*—Testator gave his wife for life the income of a fund, and provided that if he had no children "my wife may bequeath or appoint" the fund "to such of my relatives or next-of-kin as she shall think proper: the remainder of my property to be divided into forty-three parts." The forty-three parts were disposed of, and the wife was appointed "residuary legatee." There were no children, the wife survived the testator, and executed a release of her power of appointment. She then claimed the fund absolutely. *Held*, that even if the fund did not pass under the bequest of "the remainder of my property," the wife did not become entitled thereto by releasing her power.—*Brierley v. Brierley*, 43 W.R. 36.
- (v.) **Ch. D.**—*Construction—"Relations"—Illegitimacy—Power of Appointment—Powers Law Amendment Act, 1874.*—Testator gave half his residue after his wife's death "to my wife's relations as she may direct." The wife was, to the testator's knowledge, illegitimate, but had always been treated as legitimate by her parents; she was forty-seven years old and had no children. *Held*, that "relations" meant persons who would have been her relations had she been legitimate, that the power was one of distribution only, and that the objects were therefore confined to the statutory next-of-kin of the wife; and that the Act above mentioned did not alter the law on this point.—*Starkey v. Fyres*, L.R. [1894] 3 Ch. 565; 63 L.J. Ch. 779; 43 W.R. 70.
- (vi.) **Ch. D.**—*Construction—Mortmain—Mortmain Acts, 1888, s. 4; 1891, s. 5.*—A gift of land to a charity in the will of a person dying after the Act of 1891 is valid although the interest given is reversionary.—*Forbes v. Nume*, 71 L.T. 609; 43 W.R. 188.
- (vii.) **Ch. D.**—*Construction—"Die without leaving any Male Issue"—Wills Act, s. 29.*—Devise of land to A., his heirs and assigns, with a gift over if A. should "die without leaving any male issue." *Held*, that A. took an estate in fee simple subject to an executory devise over.—*Edwards v. Edwards*, L.R. [1894] 3 Ch. 644; 43 W.R. 169.

- (i.) **Ch. D.—General Power of Appointment—Real Estate—Personal Estate—French Will—Originating Summons—Form of Question.**—An English lady, domiciled in France, had a general power of appointment over a fund representing a share of the proceeds of land sold in a partition action, which was liable to be laid out in land under the Settled Estates Act, 1877. She made a French will giving all her properties and chattels to T. Held, that the will was an exercise of any power of appointment which the testatrix had over personal estate, and that the fund, being personal estate in form passed under it. An originating summons for the opinion of the Court on the construction of an instrument should state the questions categorically, and not in general terms, such as "who is entitled to" the property in question.—*Lloyd v. Tardy*, L.R. [1894] 3 Ch. 607; 63 L.J. Ch. 822; 71 L.T. 401.
- (ii.) **Ch. D.—Gift of £3 per cent. Annuities.**—In sect. 25, sub-sect. 2, of the National Debt Act, 1888, the word instrument includes a will.—*Churchill v. St. George's Hospital*, L.R. [1894] 3 Ch. 649; 71 L.T. 516; 64 L.J. Ch. 42; 43 W.R. 95.
- (iii.) **Ch. D.—Land Abroad—Proceeds of Sale.**—The proceeds of sale of foreign land can be settled by an English will in a manner valid by English law, even if such a settlement of the land itself is invalid by the *lex loci*. But a trust invalid by the *lex loci* cannot be enforced in this country until a sale has taken place.—*Whitcham v. Piercy*, L.R. [1895] 1 Ch. 83; 43 W.R. 134.
- (iv.) **Ch. D.—Life Estate by Implication.**—Under a bequest, after the death of A., to the testator's statutory next-of-kin, A. takes a life estate by implication; but not so where the bequest is to persons who are some members of the class of the testator's next-of-kin.—*Chamberlain v. Springfield*, L.R. [1894] 3 Ch. 603.
- (v.) **Ch. D.—Locke King's Act, 1877—Vendor's Lien—Building Agreement.**—A building agreement provided for leases with ground rents up to £180 a year; and provided that the lessor should have the option of purchasing from the lessee further ground rents to be created out of other land of the lessor, which, if such option were not exercised, was to be conveyed to the lessee at a small and specified price. The lessee exercised the option and died. Held, that her devisees took the land subject to payment of the purchase money in respect of the further ground rents.—*Brooman v. Withall*, L.R. [1894] 3 Ch. 558; 63 L.J. Ch. 855; 71 L.T. 481; 43 W.R. 51.
- (vi.) **C. A.—Remoteness.**—Decision of Ch. D. (see Vol. 19, p. 147, i) affirmed.—*Tullett v. Colville*, L.R. [1894] 3 Ch. 351; 63 L.J. Ch. 790; 71 L.T. 413.
- (vii.) **P. D.—Probate—Revocation—Undue Execution—Presumption.**—In an action to revoke probate, granted in common form eight years ago, on the ground of undue execution, both of the attesting witnesses swore that they did not sign in the testator's presence, but in other points their evidence did not agree. Held, that the presumption of law *omnia præsumuntur rite esse acta* must prevail against their evidence.—*Dayman v. Dayman*, 71 L.T. 699.



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# THE LAW MAGAZINE AND REVIEW.

No. CCXCVI.—MAY, 1895.

## I.—THE LATE MR. C. H. E. CARMICHAEL.

IT is nearly thirteen years since the *Law Magazine and Review* lost through the death of the late Professor Taswell-Langmead an excellent Editor; but

Primo avulso non deficit alter

and the Editorship of the periodical has since then been worthily continued by the college friend and literary colleague of Professor Taswell-Langmead, viz., by Mr. Charles Henry Edward Carmichael, the subject of this Memoir.

Mr. Carmichael was born on January 9th, 1842. He was the only son of Charles Montauban Carmichael, C.B., a General in the Indian Army, and a Knight of the Third Class of the Dooranee Empire or Kingdom of Cabul, who, having been Colonel of the 20th Hussars, had distinguished himself by his military services during the first Afghan war. His mother, Mary Eliot, was the daughter of Captain Allan Graham, of the Bengal Artillery.

Mr. Carmichael entered at Trinity College, Oxford, where he matriculated in 1861 (April 16th), then aged 19, taking his B.A. in 1865 and his M.A. in 1869. He was the Taylorian University Scholar in Modern Languages in 1862, and took a second class in Law and Modern History in 1865. It had been intended that he should enter the Indian Civil Service, and he became a selected candidate in 1862 for that department, but, fearing that his constitution could

not undergo the trying climate of India, and acting under medical advice, he resolved instead to dedicate himself to literary work in this country. In January, 1876, he became a member of the Inner Temple, and so continued to his death. It would be difficult to enumerate the prodigious amount of literary work which he accomplished. Besides undertaking the editorship of this Magazine (in which he was assisted until recently by Mr. W. P. Eversley, B.C.L., M.A.), he acted as Foreign Secretary to the Royal Society of Literature, was one of the International Secretaries of the Association for the Reform and Codification of the Law of Nations, and Foreign Corresponding Member of the Society of Comparative Legislation of Paris. He also edited, after the death of Professor Taswell-Langmead, the third and fourth editions of his friend's well-known work, "English Constitutional History," successfully maintaining the high standard of excellence attained by the author, while as sub-editor of *Notes and Queries*, his ample store of knowledge did much to elucidate the otherwise searchings in the dark of its readers.

In 1890 (April 17th) he married Harriet, daughter of Mr. William Morley, of Castleacre, near Swaffham, Norfolk, the ceremony being performed in London, at St. John's Church, Walham Green.

Mr. Carmichael was descended from a long roll of ancestors. The name Carmichael is territorial, and was assumed by his family as Lords of the Barony of Carmichael in the Upper Ward of Lanarkshire. They claim the dormant titles of Earl of Hyndford, Viscount Inglisberry and Nemphar, and Lord Carmichael, of Carmichael (1647), with the Baronetcy (Nova Scotia) of 1617. James Carmichael, M.D., F.R.S., Physician Extraordinary to King George III., assumed the name of Carmichael-Smyth, which name was retained by the family until 1841, when it was dropped by Royal licence. The uncle of Mr.

Carmichael, Major-General Sir James Carmichael-Smyth, C.B., K.C.H., K.M.T., and K.S.W., was an eminent soldier, and served on the personal staff of the Duke of Wellington at Quatre Bras and Waterloo.

Mr. Carmichael's name may be added as one more victim to the baneful scourge, influenza. Attacked by that insidious malady, he succumbed to it after a brief week's illness on March 2nd last, notwithstanding all that eminent medical skill, and the untiring nursing of a devoted wife could do in their endeavours to save him. He is buried in Fulham Cemetery. Peace to his ashes! A kind friend, a good husband, a genial companion, a man of deep religious conviction, a scholar of no mean attainments, was Mr. C. H. E. Carmichael, lost to this world at the comparatively early age of fifty-three.

*Linguenda tellus, et domus, et placens  
Uxor; neque harum, quas colis, arborum  
Te, præter invisas cupressos,  
Ulla brevem dominum sequetur.*

## II.—THE WATER COURT OF SALTASH.

**M**ANY of our readers may not be aware that the Lord High Admiral of England, now represented by the Lords Commissioners of the Admiralty, has a civil as well as a naval character. It is by virtue of the former character that he appoints those magisterial officers termed Vice-Admirals of the Coast, who have power to hold Maritime Courts and to try issues between merchants and seamen, and to keep the peace on the coasts of all Maritime counties of Great Britain, Ireland, or colonies where they may be appointed, as well as to perform other duties of an executive character, such as the impressment of seamen to serve in the Royal Navy. Formerly, these

Vice-Admirals of the Coast, in the person of their Vice-Admiralty Judges, held the Courts on the sand of the seashore, or on some beach, quay, or wharf adjoining tidal waters. But as time went on, discretion required that these Courts should be held in maritime towns for the conveniency of suitors. Although the 13 Richard II., St. 1, c. 5, passed in 1389, and the 15 Richard II., c. 3, passed in 1391, restrained the Admiralty Courts from holding pleas of things arising in the body of counties, yet, as Sir H. Spelman observes, it did not restrain the Admiralty from making execution upon the land. The body of the Realm and of every county are places *accidentally* subject to the Admiralty; therefore the Admiral may take the body in execution upon the land, and so by the better opinion may he do of goods. In the fourth year of Henry IV., 1402, a petition of the Commons to the King has for answer that: "The Admiral and his Lieutenants do sit to keep their Courts in no liberty or town, but only upon the sea coasts or arms of the same, and that every plea before them may be determined in one place without adjournment" (Cotton's Tower Records, p. 421). The accustomed place in Southwark in the beginning of the 15th Century, to hold the Admiralty Court, was a quay on the Southwark side of the river Thames. But Stow, in his Survey A.D. 1598, says: "A part of this parish church of St. Margaret (St. Margaret's-on-Hill, Southwark) is now a Court wherein the Assizes and Sessions be kept, and the Court of Admiralty is also there kept." In the reign of Henry VII., Orton quay, near London Bridge, is mentioned in the records of the Court of Admiralty as the usual place of sitting.

In the country the same prevailed. The Admiralty Court held by the Judge of Vice-Admiralty of the coast or county was sometimes in a church, as at Dover, or on a quay, or, as we have said before, on the sand of the seashore. There

is a record extant (but in private hands) of a Court of Admiralty, otherwise called a Water Court, being held in the reign of King John on the Chesil beach, near Weymouth. It was by no means uncommon for the Crown, from time to time, to exempt by Charter a city or borough from the Admiralty jurisdiction of the Vice-Admiral of the County, and to confer a special jurisdiction on such city or borough of trying its own Admiralty cases. Thus a Charter of Henry IV. exempts the Mayor and Commonalty of Bristol from the jurisdiction of the Admiralty of England, in consideration of the sum of £200 given to the King "in his necessities." Again, Queen Elizabeth conferred an Admiralty jurisdiction on Great Yarmouth by Charter, and the bailiffs of the Borough were ordered to hold an Admiralty Court every week, power being bestowed on them similar to that of a Vice-Admiral of the Coast. The last Admiralty Sessions held by them were in 1833, for the trial of pirates, *i.e.*, two seamen who technically deserved that name for stealing some goods out of a ship upon the high seas within the Yarmouth jurisdiction. The jurisdiction of trying its own Admiralty cases was also bestowed on Dublin by Queen Elizabeth, and she bestowed the same power on Galway. The Prince of Wales has Admiralty rights within the Duchy of Cornwall, and the Mayor of Southampton is Admiral of the liberties of that Borough from South Sea Castle to Hurst Castle. Again, by Charter of 12 Henry VIII., Poole was excepted from the jurisdiction of the Admiralty of England, and the Mayor was the Admiral within that liberty. The exclusive jurisdiction of Boroughs in Admiralty cases was abolished in 1835 by section 108 of the Municipal Corporations Act.

But notwithstanding the abolition of Admiralty rights in Boroughs, the Borough of Saltash, in Cornwall, continued to hold its Water Court until the 27th July, 1885, although the Admiralty Jurisdiction in Boroughs had

been abolished, as we have seen, so early as 1835, or 50 years before.\* The important Court of Admiralty Jurisdiction, or Water Court, had then, as we can well imagine, dwindled down to very small dimensions. The *Western Morning News*, on the following day (July 28th), says: "After the meeting (of the Town Council) the Mayor (Mr. W. Shaddock), the Justice (Mr. W. Gilbert), and the Town Clerk (Mr. F. W. Cleverton), preceded by the two Town Serjeants, bearing the antique silver maces of the Borough of Saltash and the Liberty of the Water Thamer, walked in State to a spot on the beach, almost underneath the suspension bridge. The senior town serjeant having called for silence while the Court was being held, under pain of imprisonment, the Town Clerk read the Royal Proclamation, the officials meanwhile standing bare-headed. The sum and substance of it was that all those who had anything to do with the Water Court 'must draw near and give their suit and service.' Forthwith, some fishwomen advanced with trays bearing salmon peel, bass, whiting, prawns, &c., which were laid at the feet of the Mayor as the gift of the loyal inhabitants, and were forthwith accepted. The senior fishwoman claimed that the same service had been rendered by members of her family for the past 127 years. At the conclusion of this performance cheers were given and the officials returned to the Town Hall, where wine and light refreshments were provided in accordance with custom."

Such is the account given in the press of the adjacent town of Plymouth. But it may be interesting to the archæologist to know under what power this Court has been held. It is said to have dated from the time of King John. Queen Elizabeth granted a Charter of Incorporation to Saltash, on the 19th June, in the 27th year of her reign.

\* Perhaps the Court was held after 1835 with regard to matters happening within the Liberty of the Water Thamer, without the precincts of the Borough.

By this Charter the Borough was incorporated under the name of "The Mayor and Free Burgesses of the Borough of Saltash." This Charter was confirmed on the 11th February, in the 30th year of Charles II. These and other Charters, however, were surrendered by the Borough to the King, in the Court of Chancery, in order that a new Charter free from certain omissions and ambiguities should be granted. This new Charter was granted on the 27th November, in the 35th year of Charles II. (1684). This Charter after reciting that Saltash is a seaport town on the confines of the County of Cornwall, situated near the main sea, and having in it a secure and sufficient harbour that many ships from time to time put in there to the great advantage of the adjacent county, that it is requisite to promote and take care of the strength and security of this ancient harbour, and that the King's peace and all acts of justice may without any further delay be kept and accomplished in the Borough, grants that the village of Saltash shall be for ever a free Borough, and that the Mayor, Aldermen, and Free Burgesses and their successors shall be a body incorporate and politic by the name of "The Mayor and Free Burgesses of the Borough of Saltash." The Charter further grants to the Mayor and Free Burgesses and their successors to hold for ever "The Village and Borough of Essa, otherwise Saltash," as also "The passage of the Saltash," and all Courts within the Borough and the water bounds and limits of the same, with the profits howsoever arising in such Courts; further the toll of oysters and of merchandise, with power to take from every barge or boat carrying sand twelve pence a year, and from every boat carrying a drag-net twelve pence a year, with many other privileges, among which should not be forgotten that of claiming from the heirs of Lord Brooke twenty-two pence and four oars belonging to the boats of "The passage of the Saltash."



In return for these privileges the Mayor and Free Burgesses are to pay to the Duchy of Cornwall, into the hands of the Receiver-General at Lostwithiel, the sum of £18 by half-yearly payments at Easter and at Michaelmas.

The Charter also appoints the Mayor for the time being the Clerk of the Market and Coroner as well within the Borough as within the creeks of the same.\* Further there are provisions for a Court of Quarter Sessions, for two weekly markets, for two yearly fairs, one the day before the Feast of St. James the Apostle, and lasting for three days, and the other beginning on the day before the Feast of the Purification of the Blessed Virgin Mary, and also lasting for three days, right to have a gaol, and to return two Members of Parliament. Many of the foregoing privileges and immunities are common to Charters of other Boroughs; the right, however, of holding an Admiralty or Water Court is uncommon and worthy of a special record. The grant is as follows:—"We have granted also and by these Presents for Us, our Heirs and Successors do grant to the said Mayor and Free Burgesses of the said Borough of Saltash that they and their Successors for ever may have and hold yearly two Water Courts or Sessions upon the Water there called Thamer, with its appurtenances on the place and on the days accustomed (to wit) one Court on the day after the Feast of the Blessed Virgin Mary, and the other Court the day after the Feast of St. James the

\* The last instance of the Mayor (Mr. W. Shaddock) exercising the duty of coroner was on the 22nd July, 1885, in the case of the collision off the Cornish coast between H.M. ship *Hecla* and the steamship *Cheerful*, which resulted in the loss of the latter vessel with eleven of her passengers and crew, during a thick fog, at 4.10 a.m., when 25 miles N.N.E. of the Longships. David Jones, second mate of the *Cheerful*, and Mrs. M. Houlbrook, one of the passengers, were picked up dead by the *Hecla*. The mayor held the inquest on board the *Hecla* when that ship was within the Liberty of the Thamer; but as he was without jurymen he called a sufficient number of officers and men of the *Hecla* to constitute a jury.

Apostle. And that all masters and owners of all ships, barges and boats, and any vessels catching and having fish, oysters, or any other profits and advantages within the Precincts, Limits and Bounds of the said Water shall do suit and service at the same Courts. And that the said Mayor and Free Burgesses shall then and there be able to Elect, Appoint and Swear twenty-four honest and lawful men to make inquisition for Us, our Heirs and Successors concerning all Transgressions and Malefactors within the Bounds and Limits of the said Water, and them to present upon their Oath, and to punish and correct Malefactors and Transgressors as from time to time out of mind they have been accustomed."

The rota of proceedings at the Water Court is as follows :—One of the sergeants-at-mace makes proclamation thus: "Oyez, Oyez, Oyez, Borough of Saltash and Liberty of the Water Thamer; all manner of persons having or who have anything to do at the Water Court or Sessions upon and for the Water Thamer, with the appurtenances and the liberty and bounds, limits and precincts thereof now here holden, draw near and give your attention, answer to your names when called on, and save your fines and recognizances. All persons are required to keep silence while the Court is proceeding upon pain of imprisonment. God save the Queen." The jury of twenty-four men were then sworn to make presentments of all transgressions and malefactors within the Water Thamer. The next proclamation was as follows :—"Oyez, Oyez, Oyez. All masters and owners of all ships, barges and boats, and any vessel catching and having any fish, oysters, or any other profits and advantages within the liberty, precincts, bounds and limits of the Water Thamer draw near and do your suit and service at this Court as aunciently hath been accustomed." At this point the fishermen did their suit and service by presenting fish to

the Mayor and Corporation. In later years, this offering, although presented as usual, appears to have been paid for by the Corporation. The third proclamation was as follows:—"Oyez, Oyez, Oyez. If anyone can inform the Mayor of this Borough or this Court now here holden of any transgressions committed within the liberty and bounds, limits and precincts of the Water Thamer, or any other matter or thing to be enquired into, done, or performed at this Court now here holden, let them come forth and they shall be heard."

It would appear that the proceedings in this Admiralty Court were of the same character as those in any Court of a Vice-Admiral of the Coast; \* that is that the proceedings

\* The following is an extract from the Protocols of a Vice-Admiralty Court held at Manningtree in Essex in 1635. They are written in Latin, and I translate them thus: "A Court of Admiralty for the County of Essex held at Manningtree on Saturday, the 9th day of the month of January, A.D. 1635, before Master Richard Pulley, Deputy of the Worshipful Robert Earl of Warwick, Vice-Admiral for the said County, in the presence of George Smith, Notary Public. (Then follow the names of the constables of every parish within the County who attended to make a return of the defaults justiciable by the Court.) On which day and place the precognition having been made as is customary, and the constables having been called to produce the precept and the list of those summoned by them. From among all and singular appearing these following were chosen as jurors and were sworn by the Holy Gospels of God as is customary." The jury made no presentments, but at a similar Court held the following year at the same place on Wednesday, the 20th day of April, 1636, the jury having been sworn as above, presented as follows: "To the fifth article we present certain ship's rigging and provision found and taken up in the sea by Roger Coeman, of Harwich, coming from Newcastle. And also we present certain ship's rigging and provision found and taken up by Edward Lee and William Lee of the same place coming from Newcastle. Also we present a fore mast taken at sea by Hugh Paint, of St. Oseth, and now in the possession of William Lumley, of St. Oseth, carpenter, worth five shillings." The articles on which the jury were sworn to enquire will be found at length in "The Office of Vice-Admiral of the Coast," by Sir Sherston Baker, Bart. (London: privately printed 1884), page 84; also a full account of a Vice-Admiralty Court for the counties of Chester and Lancaster, held in the City of Chester in 1635, at page 96 of the same work.

would have followed the rules of the Civil Law, based on the Roman Law, not of the Common Law. In the early days of our history all offences and matters in the Admiralty Courts followed the precedence and rules of the Civil Law, but in 1536 a great change was made by 28 Hen. VIII., c. 15, which, without changing the nature of the offences, directed that traitors, pirates, thieves, robbers, murderers, and confederates upon the sea should be tried by the Common Law of England. Although these more heinous crimes were directed by the statute to be tried, and were tried, by the Common Law, a considerable number of less grievous yet serious offences remained without the scope of the statute, and were still tried (and doubtless might be tried to this day) according to the Civil Law. Vice-Admirals of the Coast are still appointed, and in the last century held in the person of their respective judges, "Common Courts" and "Courts of Enquiry." The former were held from tide to tide, or from time to time as occasion required. In such Courts they gave remedy—justice commutative—between (a) merchants, (b) owners of ships and merchants, (c) other persons and owners of ships, (d) any persons concerning any matter done or to be done upon the sea or in public and navigable streams, and in parts beyond the sea. They also heard and determined all causes, offences, and maritime business arising within their respective jurisdictions. By the tenor of their commissions they were directed to try all offences or causes which came within their jurisdiction, according to the Civil and Maritime Laws and Customs; and this notwithstanding that offences committed in creeks and ports within the body of a County were always cognisable by the Common Law.

It was also given by the above Charters to the Mayor and Free Burgesses of Saltash to make perambulations of the precincts, limits and bounds of their Jurisdiction, a

power very frequently given by Charters to the inhabitants of Boroughs without a water Jurisdiction, and vulgarly called to "beat the bounds." At Saltash this duty occupied two days. On the first day the Mayor and Corporation assembled in the Town Hall, and from thence proceeded to the Town Quay, where, after swearing in twenty-four jurymen, the following proclamation was read : "Oyez, Oyez, Oyez. Borough of Saltash and Liberty of the Water Thamer. All persons are required to keep silence while this Court is proceeding upon pain of imprisonment." The Mayor and Corporation and Jury then went from the Town Quay to Coombe boundary stone where the following proclamation was read : "Oyez, Oyez, Oyez. Be it remembered that this boundary, known as Coombe, and all water courses adjoining thereto, belong to the Liberty of the Water Thamer. God save the Queen." They then followed the water course to Cowders, where a similar proclamation, substituting Cowders for Coombe, was read. They then made a straight line to Longstone, where a similar proclamation, with the requisite substitution of names, was read. From Longstone they went to South Pill water course, where a similar proclamation was read. From South Pill they went to Salter Mill boundary stone, where a similar proclamation was read. The Corporation then walked under the cliffs back to Saltash.

The procedure on the second day was as follows : The Mayor, Corporation, and Jury assembled in the Town Hall, and thence rowed up the river Lynher so far as St. German's Quay, where is a large rock with a hole in it, which is the boundary mark ; here a similar proclamation to that read the day before, *mutatis mutandis*, was read. Thence the procession returned down the Lynher and went up the river Nofet to a place called Driller's Quarry, where a proclamation as before was read. From Driller's Quarry

they came down the rivers Lynher and Thamer to Barnpool, where a proclamation is read as before. From there they went to Cawsand Bay, where at the Watery Orchard the proclamation was read. Thence they went across the Plymouth Sound in a straight line to the Shagstone or Shackleton; thence they came in by the east end of the Plymouth breakwater to the Cobler Buoy; thence up the Cattewater to the Bear's Head; thence to Prince Rock; thence they returned to the Plymouth Barbican; thence to Millbay Pier, upon which they landed. Thence they went up the Stonehouse Lake as far as Mill Bridge; thence to Mutton Cove, Devonport; thence to North Corner, Devonport; thence to John Street, Morice Town; thence up the Thamer to Western Mill Lake; thence to Saltash Passage on the Devon side; thence up the river Thamer as far as Weir Point; thence to Cargreen; thence to Holeshole; thence to Lifter; thence to Alton Quay; thence to Cothele Quay; thence to Calstock; thence to Okle Tor, near Morwellhan; thence they returned down the river Thamer, and went up the Tavy to Warleigh; thence to Maristow, opposite to which is a boundary stone known as Oldman's Beard; thence they returned down the rivers Tavy and Thamer, and went up the Moditonham Lake, at the head of which, as well as at all the places hereinbefore mentioned, similar proclamations were read; after this they returned to Saltash.\*

In the reign of George III. the Corporation of Saltash was dissolved through circumstances which are not of public interest; thereupon a new Charter of Incorporation was granted to Saltash by the King on the 7th day of June, in the fourteenth year of his reign (1774). This Charter confirmed and re-granted all the former privileges and immunities of Saltash and their jurisdiction over the

\* In more recent years the party proceeded in a steamer instead of by boats.

**Water Thamer.** The clause relating to the holding of the Water Courts is in precisely the same language as the clause in the earlier Charter of 1684, which we have already adverted to.

SHERSTON BAKER.

### III.—FOREIGN MARITIME LAWS: V. PORTUGAL.

#### TITLE VII.

##### *Collisions.*

ART. 664. When a collision is purely accidental or caused by uncontrollable circumstances there is no claim for any compensation.

B. 228, F. 407, G. 737, H. 536, 540, I. 660, S. 830, 832, Sc. 221. E. 242 (1).  
See Art. 669, *post*.

665. When a collision is caused by the default of one of the ships, the damages sustained will be made good by that ship.

B. 221, F. 407, G. 736, H. 534, I. 661. E. 242 (2), S. 826, Sc. 220.

666. When there is blame attaching to both vessels, the whole of the damages sustained are added together, and payment of the amount apportioned between the ships in proportion to the amount of blame attaching to each.

B. 229, F. 407, G. 737, H. 535, I. 662, S. 827, Sc. 220.

667. When the collision is caused by default on the part of a third ship and cannot be avoided, such [third] ship is liable.

G. 741, I. 664, S. 831

668. When it is doubtful which of the vessels caused the collision, each will bear its own loss, but both are liable jointly and severally for damage sustained by the cargoes and for compensation payable for personal injuries.

F. 407, G. 737, H. 538, I. 662, S. 828, Sc. 221.

669. A collision is presumed to be accidental except when there has been a breach of the Regulations for Preventing Collisions at Sea, or of special Harbour Regulations.

Sc. 219.

670. If a ship which has been damaged in a collision is lost on her way to a port of refuge for repairs, she is presumed to have been lost in consequence of the collision.

G. 739, H. 539, S. 833.

671. The liability of the ships provided for in the preceding Articles does not exempt the actual wrong-doers from their liability to the person injured and to the shipowners.

G. 736, I. 663, S. 829.

672. In any case in which the Commander is liable, if the ship at the time of the collision and in observance of regulations, was under the direction of a harbour or coasting Pilot, the Commander has a right to compensation from the Pilot or the Pilotage Corporation, if there is one.

B. 228, G. 740, S. 834.

Reading Articles 671, 672 and Art. 492 (4) and 492, § 3 together, it appears that if the Pilot is compulsorily employed, he is directly liable, to the exclusion of the shipowner, and if voluntarily, or in pursuance of a custom or regulation not having the force of law, he or the Corporation is indirectly liable for the results of his want of skill or negligence.

The previous Articles have spoken of the ship as liable, but having regard to this Article and Art. 492, *ante*, and the fact that "collision" is not one of the matters giving a privileged claim on the ship (Art. 578, *ante*), it would appear that in this Title "Ship" is only used, as it frequently is in Great Britain, to designate the liability of those on board and through them the owner except in the specially excepted cases specified in Art. 492.

673. Claims for losses and damages occasioned by a collision between ships must be made before the proper Local Authority of the place where it happened, or of the first port that the ship reaches after it, within three days, under pain of being barred.

§1. Default in making a claim does not, so far as personal injuries and damage to cargo are concerned, prejudice



- those concerned who are not on board or who are prevented from expressing their wishes.

B. 231, F. (1891) 436, I. 665, S. 835, 836, Sc. 323, 325.

674. Questions about collisions are decided as follows :—

- (1.) When they happen in harbours or territorial waters, by the law of the place.
- (2.) When on the high seas, and between vessels of the same nationality, by the law of that nation.
- (3.) When on the high seas, and between vessels of different nationalities, each is governed by the law of its own flag, and cannot recover more than that law allows.

675. An action for loss and damage arising from a collision may be commenced either in the Court of the place where the collision happened, or in that of the domicile of the owner of the vessel proceeded against, or in that of the ship's home port, or in that of the place where the ship may be.

B. 232, I. 665, Sc. 323, 325.

## TITLE VIII.

### *Salvage and Assistance.\**

ART. 676. No one is allowed to take possession of wrecked vessels or of wreckage, or of cargo or any goods, or other private property which are washed ashore by the sea, or picked up on the high seas.

H. 546, I.M.M.C. 125.

677. Anyone who saves a ship or goods that are wrecked and does not at once deliver them to the owner or his

\* The distinction between "Salvage" and "Maritime Assistance" runs with more or less clearness through most of the Continental Codes, but is nowhere defined as clearly as in Articles 681, 682 of this Code, and Articles 561 and 562 of that of Holland, from which latter the Portuguese law on this point appears to be taken; the distinction is unimportant when the award rests entirely in the discretion of the Court, as in Portugal and England.

representative on demand and on giving bail for the salvage expenses, will forfeit all claim to an award for assistance or salvage, and will be liable for damage occasioned by his retention of them, without prejudice to Criminal proceedings if there is ground for them.

H. 548.

678. Anyone who saves or recovers a ship or goods at sea or ashore in the absence of its owner or his representative, and when they are unknown, must at once remove and deliver the property to the Custom House Official of the nearest place to that at which the property was saved, and if he does not do so, will forfeit any right he might have to any salvage or assistance award, and will be liable for losses and damages, without prejudice to Criminal proceedings if there is ground for them.

H. 550, I.M.M.C. 125.

679. The salvage of ships aground, in peril, or wrecked, as also of goods cast ashore, whether the Commander is present or absent, must be carried out under the supervision of the proper authority.

§1. The following are the duties of the person in authority :—

- (1.) To draw up an inventory of the salvaged property and take proper steps for its preservation.
- (2.) To order a sale of such articles as are unclaimed and liable to deteriorate, or the preservation and custody of which is clearly contrary to the interests of the owner.
- (3.) To advertise within eight days next after the salvage in a local newspaper, or in one published in the neighbourhood, full particulars of the disaster, pointing out the marks and numbers on the goods
  - and inviting those concerned to claim them.
- (4.) To report to his superior what has happened, and what steps he has taken.

- (5.) To do everything else that special regulations may order.

H. 551-555, I.M.M.C. 123.

680. When the owner or his representative appears and claims the goods, the salved property or their proceeds will be delivered to him when he proves his title and pays the salvage award and other charges, or gives sufficient security for them.

§1. If the claimant's title is doubtful, or there is an intervention of third parties, or a dispute as to the salvage award, the parties will be sent before a Judge.

§2. If no claimant appears in answer to the advertisements mentioned in clause (3) of the preceding Article, the salved property will be sold by public auction, and the proceeds, after deducting salvage charges, will be placed in a Public Bank.

H. 556.

681. Salvage awards are due :—

- (1.) When ships or goods are found derelict on the high seas or on the shore, and are salved or recovered.
- (2.) When goods are salved from a ship which is ashore or stranded on rocks, and in such danger that she offers no safety to her cargo or refuge to her crew.
- (3.) When goods are got out of a vessel practically broken up.
- (4.) When a ship in imminent peril and offering no further security is abandoned by her crew, or in their absence is taken possession of by persons who endeavour to salve her and bring her into port with the whole or a part of her cargo.
- (5.) When a ship and cargo, either together or separately, are got afloat or brought into a safe port by the aid of third parties.

G. 742 II. 562, &c. 224.

682. Assistance awards are due :—

- (1.) When a ship which is stranded or ashore is got off and afloat with its cargo with the assistance of third parties.
- (2.) When a ship in distress at sea is helped and brought into a safe port with the assistance of third parties.

G. 742, 749, H. 561, Sc. 224.

683. The following cannot claim salvage or assistance award :—

- (1.) Members of the crew.
- (2.) Those who force their services.

G. 752, H. 545, I.M.M.C. 120. -

684. All contracts made whilst the danger exists may be repudiated on the ground of being excessive, and reduced by the Judge who has jurisdiction.

G. 743, H. 568, I.M.M.C. 127, Sc. 227.

685. If there is no agreement, salvage and assistance awards are made by the Judge who has jurisdiction, having regard to the rules of equity and taking into account especially the following circumstances :—

- (1.) The nature of the service.
- (2.) The zeal displayed.
- (3.) The time occupied.
- (4.) The services rendered to ship, people and goods.
- (5.) The expenses incurred.
- (6.) The injuries sustained by the salvors or helpers.
- (7.) The number of persons actively engaged.
- (8.) The peril to which such persons were exposed, as also their ship and its value.
- (9.) The peril which threatened the ship, the people, and the goods that were saved.
- (10.) The actual value of the salvaged property, deducting expenses.

G. 744, 746, H. 561, 563, I.M.M.C. 126, 121, 134, Sc. 225.

686. An award of salvage or for assistance includes all expenses incurred by the salvors or helpers, but does not

include fees, charges, dues, and taxes, or charges for the custody and preservation of the salvaged property, or for the valuation and sale of it.

§1. An award for assistance is made at a lower figure than one for salvage.

§2. The value of the property salvaged only exercises a secondary influence on the amount of the award.

G. 745, II. 561, Sc. 226.

687. When many persons take part in rendering services to a ship or her cargo, the award must be apportioned in proportion to the services of the people themselves and of the things employed in the said services.

§1. In doubtful cases, the award will be apportioned to each individual.

§2. Those who have exposed themselves to danger in rendering life salvage are admitted to a share in the award made under the above-mentioned conditions.

G. 750, Sc. 228.

688. When the salvage service or assistance is rendered by another ship, half the award belongs to the owner, a quarter to the Commander, and a quarter to the rest of the crew in proportion to their respective wages, unless otherwise agreed.

G. 751, Sc. 228.

689. The owner of salvaged property is not personally liable to pay salvage or assistance awards.

§1. A consignee holding a Bill of Lading is personally liable up to the value of the goods which are delivered under it.

G. 755.

690. Salvage or assistance in harbours, rivers or territorial waters, will be rewarded in accordance with the laws of the place where it is effected, and on the high seas in accordance with the law of the salving or assisting ship.

691. Claims for salvage awards or for assistance may be brought either in the Court within the territorial jurisdiction

of which the service was rendered, or before the Judge of the place where the owner of the salved property is domiciled, or before the Judge of the ship's home port, or of the port where she may be.

G. 756, H. 567, I.M.M.C. 126.

\* \* It may be remarked, as a final note to the Portuguese Code, that by a Decree of 29th March, 1890, Tribunals of Commerce were established in all places where there was already a Court of First Instance, which means practically, so far as the Maritime Jurisdiction is concerned, in any port visited by foreign vessels. The Court is composed of a Judge, who is a lawyer, and a Jury selected or elected by the traders of the place.

Following the example of France and Italy, a Decree of September 15th, 1890, grants premiums on the employment of vessels under the Portuguese flag.

F. W. RAIKES.

#### IV.—THE WARS AND THE FINANCES OF THE INDIAN GOVERNMENT.

**I**N an article recently published in this Magazine the writer, after reviewing the critical condition of things in India—her growing financial embarrassments, the degradation of her Law Courts presided over by Government Servants as Judges, her Legislature stripped of the Constitutional privilege of free deliberation, and the disastrous line of action pursued by her Government in the matter of foreign wars—submitted the following remark regarding the question as to how India is to be extricated from her perilous situation:—"The first step which her history suggests is that the arbitrary power wielded by the Indian Secretary of State should be checked at once, and

his legitimate authority be strictly defined; that the Minister himself should be made practically amenable to an independent Court of Justice, and be subject to a personal prosecution for every act exceeding the limit of his authority."

This proposition, the principle of which is not likely to be questioned, may, however, in view of the difficulty of carrying it into effect, be looked upon as a truism possessing little practical utility. The difficulty of the task is certainly very considerable, seeing that Parliament is the only Constitutional authority to which the Indian Secretary of State is responsible, and that his responsibility to that body is virtually neutralised by the support he has acquired in the British Legislature through the sacrifice of Indian interests conceded to the Constituencies by whom Parliament itself is ruled. On the other hand the danger of the situation in India is great, and may any day become overwhelming, as no effort is made to arrest the evil, and the exercise of arbitrary power not only violates the British Constitution, but raises an unsurmountable barrier to the introduction of reform. Under these circumstances it seems of little avail to discuss measures of economy and administrative improvements, so long as the laws are disregarded by the Executive and the resources of India are wasted in unprofitable wars by the arbitrary powers assumed by her Government.

The straits of the Indian Exchequer, the interference of the Executive with the decisions of the Law Courts, the official pressure under which the majority of the Indian Legislature are made to vote in obedience to the orders of the Secretary of State and regardless of their conscience and convictions—these crying evils have been exposed and widely discussed of late, both in this country and in India; and it may therefore not be necessary to enlarge on them in this instance. But the action of the Government in the

matter of trans-frontier wars does not appear to have received the attention which it loudly claims. The incidents and issues of those wars are imperfectly known to the public, in consequence of despatches of commanding officers and other important papers on the subject being sedulously withheld by the Government of India. The following statement may, therefore, cause surprise to a great many readers.

During the last seventeen years, no less than twenty British expeditions invaded the borderlands of Afghanistan for the purpose of subjugating their inhabitants, but without having accomplished that purpose in a single instance. Thousands of fanatical tribesmen, who resisted the yoke, were shot down by our superior fire-arms; numberless villages were burnt or blown up; crops were destroyed; cattle captured, and the inhabitants of those villages were left to perish of hunger and exposure; but nowhere was British authority accepted, and it was exercised only in the limited spaces occupied by our troops, ceasing immediately on the departure of our soldiers.

While these unprovoked and (politically as well as morally) unjustifiable attacks on our neighbours have engendered resentment and distrust towards the British, the heavy cost of the expeditions, by inordinately increasing the military expenditure of the Indian Government, has led to the imposition of oppressive taxes and the illegal proceedings of fiscal officers in India—evils resulting directly from the aggressive foreign policy of the Indian Government. That policy manifestly aims at conquest and territorial aggrandisement; but its supporters allege that it is based on the apprehension that Russia is intent on invading India through Afghanistan, and that the best way to guard against the danger is to maintain British garrisons in Afghanistan, ready to meet our foe in that difficult region, although far from our reserves and in the



midst of a fanatical population intensely hostile to our presence in their territory. This policy was tried in 1838-42, when it proved appallingly disastrous, and was thereupon completely abandoned ; but in 1875 it was revived under the name of the "forward" or the "scientific frontier" policy, in the expectation that our improved weapons and our many scientific contrivances would enable us to compass the subjugation of Afghanistan, an enterprise in which we had so grievously failed some thirty years before. The war of 1878-80, undertaken in that expectation, proved however equally disastrous and humiliating. Meanwhile the revival of the policy in question had been strongly condemned by every military authority, including Lord Napier of Magdala, who had held for sixteen years appointments in India involving direct responsibility for the security of the Indian frontier, and Lord Roberts, who, with the experience acquired in the last Afghan war, stated in his despatch dated May 29th, 1880 : "The longer and more difficult the line of communication is, the more numerous and greater the obstacles which Russia would have to overcome ; and far from shortening one mile of the road, I would let the web of difficulties extend to the very mouth of the Khyber."

Thus, both actual result and military authority have long exposed the utter unsoundness of the above-mentioned policy ; and that the Government should still adhere to it seems unaccountable, unless it be due to the fact that, while the abandonment of a policy that has proved so disastrous would imply the avowal of a very grave error, its prosecution entails no obligation to justify it in Parliament, so long as the necessary war supplies can be drawn from the Indian treasury.

The latest trans-frontier operations of the Indian Government are the war in Waziristan and the invasion of Chitral. The former undertaken in October appears to have come

to an end, as no active operations seem to be carried on there at present, although the object of the war—the subjugation of the country—remains unaccomplished. The Chitral expedition, organised in March for the vindication of an alleged right of Suzerainty, is now in active operation, and its issue is in the womb of futurity. The one thing certain in the matter is that a war in which twenty thousand British troops are engaged, must involve very considerable expenditure, which cannot fail seriously to aggravate the existing difficulties of the Indian Exchequer.

In order to apprehend, however, the Constitutional bearing of the action of the Indian Government in thus carrying on trans-frontier wars, it should be remembered that when Parliament intrusted the control of the Indian administration to a Principal Secretary of State, it enacted provisions for maintaining the supremacy of the law throughout our Indian possessions, for ensuring the free discussion of all legislative projects in the Council of the Viceroy, and for restricting the application of the Indian revenue exclusively to the wants of the country. One of the latter provisions is embodied in Section LV. of the 21st and 22nd Vict., c. 106, which runs as follows:—  
“ Except for preventing or repelling actual invasion of Her  
“ Majesty’s Indian possessions, or under sudden and urgent  
“ necessity, the revenues of India shall not, without the  
“ consent of both Houses of Parliament, be applicable to  
“ defray the expenses of any military operation carried on  
“ beyond the external frontiers of such possessions by Her  
“ Majesty’s forces charged upon such revenues.”

Now it is evident that the intention of Parliament, recorded in such unmistakeable language, has been deliberately frustrated by the Indian Government using Indian revenue in trans-frontier wars, while no sudden or actual danger menaced the Indian frontier. The object of those wars has simply been to extend the Indian frontier into the

territories of our neighbours—in other words, conquest and territorial aggrandisement.

If the Indian Secretary of State is to continue spending the revenues of India in carrying on transfrontier wars, in disregard of the Statutes which define his legitimate power and his obligations, can any doubt be entertained as to the financial result of such a course? The resources of India, severely strained during a long period of warfare, are already unequal to the wants of her Government, and loans have to be raised annually for covering the deficiency and discharging the interest on the public debt. A similar condition of things has, in every State where it obtained, been the forerunner of bankruptcy; and is there any ground for expecting a different result from it in India?

On the other hand, the wars which have caused this financial breakdown have entirely failed to accomplish their object—namely, the submission of our tribal neighbours. This disappointing issue is certainly not due to any short coming on the part of our troops, for their valour and endurance have justly called forth the admiration of their countrymen. The failure must be ascribed to the action of those who initiated, and persisted in, those wars, in ignorance of the character of the Afghans and of the peculiar features of their land. The history of Napoleon's disastrous Spanish campaigns furnishes, in some respects, a parallel instance—namely, in the fanaticism of the inhabitants, the unfavourable nature of the ground, the difficulty of transport and supply, and the irrational persistence in the enterprise after it had shown itself to be practically impossible.

An officer, who served in the Afghan Campaign of 1879, described the impediments which a British Army encounters in that country in the following clear and convincing terms:—"The enormous difficulty of carrying out a successful campaign in Afghanistan is due to two causes;

and as these would operate as effectually to check the advance of an invader from Central Asia, it will be worth while to state them in detail. The first cause is the absence of any combined resistance. Attacking the Afghan tribes is like making sword-thrusts into the water. You meet with no resistance, but you also do no injury. The tribes harass the communications of an invading army; they cut off straggling parties; they plunder baggage; they give the troops no rest; but they carefully avoid a decisive action. The invading force moves wherever it pleases; but it never holds more of the country than the ground on which it is actually encamped. Each separate tribe is, as it were, an independent centre of life, which requires a separate and special operation for its extinction. The consequence is that the only way in which we could hope to enforce our authority throughout Afghanistan would be by a simultaneous occupation of the entire country; and seeing that the country is as large as France, very sparsely populated, and quite incapable of feeding a large army, such an occupation is simply impossible. The other great difficulty is that there is hardly any forage in Afghanistan, and consequently the transport train of an invading army cannot fail to be crippled after a few weeks of active service. The moment that such a catastrophe is consummated, an army in the field becomes as cumbersome and useless as a swan on a turnpike road. This latter difficulty it was which compelled the Government to make the treaty of Gandamak."

Since the above statement was published in 1881, neither the configuration of the land in Afghanistan, nor the character of its inhabitants has changed, and there seems no reasonable ground, therefore, for expecting that the present war in Waziristan, if it be continued, or the Chitral expedition, or any further operations which may be undertaken for executing the "forward frontier" policy, will result

in issues more successful than those of the expeditions already employed for the promotion of that policy. It is urgent, therefore, if British prestige is to be maintained in the East, and the finances of India are to be retrieved, that the illegal exercise of power which has involved the nation in such inglorious and unprofitable wars, should be stopped as speedily as possible. The situation certainly is full of dangers, and the remedy which naturally suggests itself is the trial and, if necessary, the punishment of those whose errors and shortcomings have caused the mischief. But impeachment has become obsolete, and the House of Commons, whose supineness has condoned and encouraged illegal and arbitrary power in the administration of India, will doubtless decline to issue the necessary indictment, except under the pressure of strong public opinion calling for the needed reform. Such opinion has not been manifested as yet. In this critical situation we can only hope that British statesmen possessed of patriotism and ability to cope successfully with the conjuncture, will come forward before things have drifted much further in their present perilous course, and a serious catastrophe becomes inevitable.

J. DACOSTA.

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## V.—MEMOIR OF THE LATE LORD SELBÖRNE.

THE Earl of Selborne, better known as Sir Roundell Palmer, died at Blackmoor, Petersfield, on the 4th of May. He was born on the 27th November, 1812, in the Rectory of Mixbury in Oxfordshire, being the second son of the Rev. William Jocelyn Palmer. He was educated at Winchester, passing thence to Oxford, where he achieved a brilliant University career, taking the Ireland Scholarship in 1832 and the Eldon Scholarship in 1834, as well as the 1st Class in Classics. In November, 1834, he entered the chambers of Mr. Booth, a well-known conveyancer and parliamentary draftsman, and in 1837 he was called to the Bar at Lincoln's Inn. He quickly came to the front, and by the year 1855 his practice had become enormous. He was first returned to Parliament for Plymouth in 1847, became a Queen's Counsel in 1849, was Solicitor-General in 1861, Attorney-General in October, 1863. On the 15th October, 1872, he succeeded Lord Hatherley as Lord Chancellor, retiring from that office in 1874, but again resuming that high position on April 28th, 1880, in the place of Lord Cairns. He resigned in 1885. The New Law Courts were opened during his tenure of office, and he was raised to an Earldom in connection with this event. He is responsible for the change effected in the history of English Law and Procedure by the operation of the Judicature Acts, a well-designed measure intended to do away with the great waste of judicial power, and to put an end to the irrational and mischievous dualism which had for centuries pervaded the administration of English Law. The Lord Chancellor (Lord Herschell), speaking of his death in the House of Lords on May 7th, said: "My Lords, I feel sure that I shall be acting in accordance with the feeling of your

Lordships in giving expression to the sense which this House entertains of the loss it has sustained owing to the death of Lord Selborne. (Hear, hear.) Just ten years ago, when an illustrious predecessor of his on the Woolsack died—the late Lord Cairns—Lord Selborne, who was detained from being present by a severe domestic affliction, nevertheless gave expression to his wish to offer his testimony to the remarkable powers and great worth of his illustrious predecessor, and to the loss this House and the country had sustained. I am sure we all feel that we have

- lost another illustrious lawyer, who may worthily be ranked with the one to whom I have just alluded. Lord Selborne was a master of equity jurisprudence, but although having the completest mastery of the technicalities of the law, he was no mere technical lawyer. He had a remarkable grasp of legal principles, and capacity for applying them with the utmost intelligence and perspicacity to the work in hand. His industry was indefatigable; he spared himself no pains; he ever gave of his best; he used his utmost endeavours to arrive at a right conclusion, and his judgments were as remarkable for their thoroughness and solidity as for the clearness with which they were expressed. But it is not only as a distinguished advocate and Judge that he will be remembered. He took a foremost part in the changes that were made now some twenty years ago, which led to the system of judicature and of administration of the law that now prevails in our Courts. He was one of the most active in bringing about what he conceived to be of great public value—the concentration in one building of the various Courts of Justice. My Lords, I have spoken of what he was as a lawyer and a Judge. I need not remind your Lordships that he was much more than that. The power and ability with which he took part in the discussion of other questions in your Lordships' House must be fresh in your memory. The echoes of the speeches

which he made not long since still linger in these walls, and even those against whom his arguments were directed, could not fail to appreciate their force and power, and also to recognise the fact that these splendid abilities were neither dimmed nor diminished by growing age or increasing infirmities. My Lords, I do not think any of us can forget the impression he made of earnestness and sincerity whenever he addressed your Lordships' House. This is not the time, nor is it the place, to dwell upon what he was as a man, but a few words I am sure your Lordships will pardon. In spite of the absorbing and engrossing nature of his duties and labours in connection with the law, he never allowed himself to be entirely occupied by them; but his energies were distinctly distributed in many directions of fruitful activity with a view to the benefit of his fellow men. He attained the highest rewards of the career which he had chosen, but I believe few men less made them their ambition or their aim. I have met few, perhaps none, who were more completely unworldly in spirit than he was. On his lofty sense of duty I am sure it is unnecessary to dwell; all must have recognised it. Where his duty, as he saw it, led him he followed, without flinching or reserve, and without the slightest regard to consequences. My Lords, behind a somewhat reserved manner, there lay, as all who, like me, had the honour and pleasure of his friendship, knew, a kindly heart and warm affection, and, if there were some who thought at times that his judgment of those who differed from him on political questions was unduly severe, I am sure they were all ready to recognise that this resulted solely from the strength—I may almost say passionate strength—of his convictions, and was in no way prompted by personal ill-will or malice, or desire to give offence. I am quite sure that in this House we all, without respect to Party, feel that the House is poorer for his loss, that the blank he has left will not easily be filled,



and will long be felt; and those of us who have to take part in the discharge of the judicial duties of this House, sitting as the ultimate Court of Appeal, will long have reason to mourn the loss of a valuable colleague."

Lord Halsbury, The Duke of Devonshire, The Marquis of Salisbury, and The Earl of Rosebery also referred to the loss sustained by the death of Lord Selborne.

The funeral took place on May 8th, in the Hampshire churchyard of Blackmoor, where the body of the late Lady Selborne was already buried, was attended by an enormous concourse of people, rich and poor alike assembling to testify their regard for the late Earl. The body was met at the entrance to the church by the Archbishop of Canterbury, the Bishop of Winchester, and the Rev. R. A. C. Bevan, who, with the choir, preceded it up the aisle into the chancel, singing Lord Selborne's own hymn, "Lord, when my soul her secrets doth reveal." Following as mourners were Lord and Lady Wolmer, the Bishop of Southwell and Lady Laura Ridding, Earl and Countess Waldegrave, Mr. Tournay and Lady Sarah Biddulph, Lady Sophia Palmer, Archdeacon Palmer, and the Marquess of Salisbury. The Rev. Dr. Fearon (head master) and the three Senior Prefects represented Winchester College, and Mr. Marshall, of Queen's College, the University of Oxford. General Sir Michael Biddulph attended on behalf of the Queen, the Bishop of St. Asaph on behalf of the Church in Wales, and Mr. G. A. Spottiswoode (vice-chairman) for the House of Laymen. Among others present were Viscount Cranborne, Lord Edward Cecil, Lord Robert Cecil, the President of Magdalen College, Oxford, Mr. Justice Wright, Mr. Justice North, Lord Stanmore, Sir Stafford Northcote, Lord Northbrook, Mr. J. G. Talbot, M.P., and Mr. H. T. Ansfruther, M.P. "O, rest in the Lord" was played as a voluntary, and as everyone stood around the grave the "Te Deum" was sung.

## VI.—THE ENGLISH AND AMERICAN BAR ASSOCIATIONS.

**I**T will be remembered that at a General Meeting of the Bar, held on the 14th of July, 1894, the Report of a Committee of Barristers, appointed on the 7th April, 1894, at the instance of Sir Henry James, to consider whether the constitution, organisation, or action of the Bar Committee could be improved, and; if so, in what respect, was adopted unanimously.

The Report was as follows:—

“Your committee are of opinion that it is desirable in the interest of the profession, and especially of its younger members, that a consultative body should exist, representative of the Bar, which should have for its duty the consideration of all matters affecting the profession, including the maintenance of the rights and privileges of the Bar, the enforcement of professional discipline and custom, the examination of proposed legislation and of the rules of practice from time to time in force, and should upon all such subjects be able to communicate with other persons or bodies in the name and with the authority of the whole profession.

“These functions have for the past ten years been in some measure performed by the Bar Committee, and your committee desire to record their sense of the diligent and valuable service rendered to the Bar by that committee and by its able and devoted honorary secretary, Mr. Lofthouse. But your committee are of opinion that the Bar Committee, supported as it has been by the voluntary subscriptions of but a small number of the members of the Bar, has lacked the authority needed for the full usefulness of its work, and has necessarily been unable effectually to claim to represent the opinion and wishes of the whole profession.

“Your committee consider that it is essential that this representative body should have the means of establishing permanent offices, and employing the necessary paid staff, and that the moneys required for these purposes should not be sought from

casual and voluntary subscriptions, but should be obtained from the funds now administered by the Benchers of the four Inns of Court. And your committee are of opinion that a sum of not less than £1,000 per annum will be required to enable the work to be satisfactorily performed.

"Your committee recommend that, with the view of strengthening the representative body of the Bar and bringing it into direct relation with the governing bodies of the Inns of Court, its constitution should provide for the appointment by each Bench of a certain number of barristers of their Inn, who should be nominated members of what your committee suggest should in future be called the General Council of the Bar.

"Your committee have held seven meetings, and have carefully considered all suggestions laid before them, and now present a proposed set of regulations for the General Council of the Bar, which have been drafted by Mr. Wolstenholme in accordance with resolutions passed by your committee—resolutions which your committee are glad to be able to report were in all cases adopted without a division.

"Your committee are unanimously of opinion that if a council should be constituted according to these regulations, and provided with the needful funds, as above suggested, it will be able to exercise valuable and much-needed influence in gathering and representing the opinion of the profession, and in upholding the discipline and safeguarding the interests of the Bar.

"It has been strongly urged upon your committee by some of its members that the full value of any central organisation of the Bar will not be realised unless provision be made by means of some building adequate for the purpose, for the establishment of a centre for the corporate life of the Bar in its social as well as its professional aspects. Your committee do not consider that this comes so clearly within the terms of the resolutions by which they were appointed as to entitle or call upon them to make any specific recommendation on the subject, but they desire to express their sympathy with the proposal, and their opinion that the creation of some such organisation would be of much value to the profession in bringing together the different ranks and sections of its members.

"Signed on behalf of the committee,

"EDWARD CLARKE, Chairman.

"June 25th, 1894."

PROPOSED REGULATIONS FOR THE GENERAL COUNCIL OF  
THE BAR.

CONSTITUTION.

1. "The General Council of the Bar" as constituted by these regulations is hereinafter referred to as "the Council."

2. The Council shall be the accredited representative of the Bar, and its duty shall be to deal with all matters affecting the profession and to take such action thereon as may be deemed expedient.

3. The Council shall consist of—

(i.) The Attorney-General and Solicitor-General for the time being, and every former Attorney-General or Solicitor-General, whilst remaining in actual practice at the Bar (hereinafter referred to as the official members).

(ii.) Sixteen practising barristers, of whom four are to be nominated by the masters of the Bench of each of the four Inns of Court (hereinafter referred to as the nominated members).

(iii.) Forty-eight practising barristers to be elected by the whole Bar (hereinafter referred to as the elected members).

\* 4. The Council shall have power to appoint as additional members such barristers in actual practice, not exceeding six in number, as the Council may consider it desirable to appoint by reason of their Parliamentary or professional position, or by reason of their representing any circuit or section of the Bar not adequately represented. The members so appointed shall go out of office at the time appointed for the close of the election next following their appointment.

5. The Council shall be deemed duly constituted, notwithstanding any vacancy in the number of nominated or elected members.

6. Of the elected members not less than twelve shall be of the Inner Bar, and not less than twenty-four of the Outer Bar, at the time appointed for the close of the election, and such proportion shall be maintained in filling up vacancies.

7. Of the elected members, six at least shall be of less than ten years' standing at the Bar at the time of their election, and this proportion shall be maintained in filling up vacancies.

8. One half of the elected members shall go out of office at the time appointed for the close of the election in 1896, and in each subsequent year. *The Council shall decide who are to be the elected members to go out of office in 1896.* In each subsequent year the elected members to go out of office shall be those who have been longest in office since their last election. Elected members going out of office shall be eligible for re-election.

#### ELECTIONS.

9. The time of the annual election shall be fixed by the Council, and shall be held as soon as possible after the annual general meeting of the Bar.

10. Every candidate for election shall be proposed in writing, signed by at least ten barristers, and sent to the secretary within one week after the annual general meeting of the Bar shall have been held under these regulations.

11. After the expiration of one week from the day when the annual general meeting of the Bar shall have been held, the Council shall meet, and it shall be its duty to nominate for election additional candidates from any section of the Bar not in the opinion of the Council adequately represented on the Council, and by the candidates proposed.

12. A resolution of the Council shall be a sufficient nomination of such additional candidates.

13. If more candidates be proposed than there are vacancies on the Council, the election shall be by voting-papers to be personally filled up and signed by the electors.

14. Every barrister shall be entitled to vote, and voting-papers shall be sent to every barrister whose professional address within the United Kingdom is given in the "Law List."

15. Every voter shall have one vote for each complete number of two to be elected, and the votes may be divided in any manner between two or more candidates, but so that not more than four votes shall be given for any one candidate.

16. Voting-papers not filled up in accordance with these regulations shall be void.

17. The Council shall make regulations for the conduct of the election, and in case of an equality of votes shall determine which of the candidates shall be deemed to be elected.

18. If the full number of the Council to be elected be not proposed in manner required, those candidates who are duly

proposed shall be elected, and the Council, as elected, shall have power to fill up vacancies.

19. Casual vacancies which may occur among the elected members may be filled up by the Council, and the person filling a vacancy shall go out of office as if he had been elected instead of, and at the same time as, the person whose place he fills.

#### POWERS OF THE COUNCIL.

20. The Council shall carry into effect the purposes for which it is constituted as before mentioned in such manner as it may determine. The Council shall appoint a chairman and vice-chairman, and may appoint an executive committee and such standing committees and sub-committees as it may think fit, and may from time to time delegate to any such committee or sub-committee any of the powers or duties of the Council as to the Council may seem desirable.

21. The Council shall have power to appoint a secretary, treasurer, and such assistants, officers, and servants as may be necessary, with or without salaries.

22. The funds received by the Council shall be at its disposal for the payment of such salaries and other expenses as the Council may incur in promoting the objects for which it is constituted.

23. The quorum of the Council shall be eight.

24. The Council shall have power to make bye-laws regulating the elections and the proceedings at their meetings, and generally for the purpose of carrying these regulations into effect, and from time to time to alter such bye-laws.

25. The decision of the Council as to the mode in which effect is to be given to these regulations, or on any question of construction or fact arising under these regulations, to be conclusive.

#### ANNUAL GENERAL MEETING OF THE BAR.

26. The annual general meeting of the Bar shall be held (subject to the permission of the masters of the Bench) in the Old Dining Hall of Lincoln's Inn, at a quarter-past four o'clock p.m., on the second Tuesday in the Easter sittings; but the Council shall have power, with the concurrence of the Attorney-General, to alter the date, time, and place of the annual general meeting.

27. The Council shall submit its accounts to the annual general meeting, with a statement of the proceedings of the past year, and a record of the attendances of the elected members of the Council at its meetings.

28. Notice of any resolution to be proposed at the annual general meeting shall be given in writing to the secretary of the Council not less than seven clear days before the day of meeting.

#### TEMPORARY.

29. The first election shall be held in 1895.

30. The present elected members of the Bar Committee for the current year shall be the elected members of the Council, and, together with the official members and the nominated members, shall constitute the Council until the election shall be held in 1895, but all the elected members shall retire from office at the time appointed for the close of that election.

After the adoption of the above report and regulations, it was moved by Mr. Marten, Q.C., and seconded by Mr. Crump, Q.C., "That the Attorney-General (Sir John Rigby, Q.C., M.P.), be requested to send a copy of the report and regulations to the Masters of the Bench of each of the four Inns of Court, and to apply to the Masters of the Bench of each Inn to nominate four practising Barristers to serve on the General Council of the Bar, and to submit to the Masters of the Bench the suggestion of the committee, confirmed by this meeting, that they should provide the necessary funds for carrying on the work of the Council." This motion was unanimously agreed to.

The forthcoming election of the General Council of the Bar will be a matter of considerable interest to the profession; and it is particularly incumbent on members of the Junior Bar to consider well the claims of members of the Inner Bar, whose interests it may be observed are not always identical with those of the Junior Bar. At the present time, it may not be without advantage to the profession to know something of the manner in which the Bar Association is carried on in the United States, and we

therefore publish the Constitution and the By-Laws of the American Bar Association. They are as follows:—

## CONSTITUTION.

### NAME AND OBJECT.

*Article I.*—This Association shall be known as “THE AMERICAN BAR ASSOCIATION.” Its object shall be to advance the science of jurisprudence, promote the administration of justice and uniformity of legislation throughout the Union, uphold the honour of the profession of the law, and encourage cordial intercourse among the members of the American Bar.

### QUALIFICATIONS FOR MEMBERSHIP.

*Article II.*—Any person shall be eligible to membership in this Association who shall be, and shall, for five years next preceding, have been a member in good standing of the Bar of any State, and who shall also be nominated as hereinafter provided.

### OFFICERS AND COMMITTEES.

*Article III.*—The following officers shall be elected at each Annual Meeting for the year ensuing:—A President (the same person shall not be elected President two years in succession); one Vice-President from each State; a Secretary; a Treasurer; a Council, consisting of one member from each State (the Council shall be a standing committee on nominations for office); an Executive Committee, which shall consist of the President, the last ex-President, the Secretary, and the Treasurer, all of whom shall be *ex-officio* members, together with three other members, to be chosen by the Association; and the President, and in his absence the ex-President, shall be the Chairman of the Committee.

The following committees shall be annually appointed by the President for the year ensuing, and shall consist of five members each:—

- On Jurisprudence and Law Reform;
- On Judicial Administration and Remedial Procedure;
- On Legal Education and Admissions to the Bar;
- On Commercial Law;
- On International Law;
- On Publications;
- On Grievances.



A majority of those members of any committee, including the Council, who may be present at any meeting of the Association, shall constitute a quorum of such committee for the purpose of such meeting.

The Vice-President for each State, and not less than two other members from such State, to be annually elected, shall constitute a Local Council for such State, to which shall be referred all applications for membership from such State. The Vice-President shall be, *ex-officio*, Chairman of such Council.

A committee of three, of whom the Secretary shall always be one, shall be appointed by the President at each Annual Meeting of the Association, whose duty it shall be to report to the next meeting the names of all members who shall, in the interval, have died, with such notices of them as shall, in the discretion of the committee, be proper.

It shall be the duty of the Vice-President from each State and Territory to report the deaths of members within the same to the said committee.

#### ELECTION OF MEMBERS.

*Article IV.*—All nominations for membership shall be made by the Local Council of the State to the Bar of which the persons nominated belong. Such nominations must be transmitted in writing to the Chairman of the General Council, and approved by the Council, on vote by ballot.

The General Council may also nominate members from States having no Local Council, and at the Annual Meeting of the Association, in the absence of all members of the Local Council of any State; *Provided*, That no nomination shall be considered by the General Council, unless accompanied by a statement in writing by at least three members of the Association from the same State with the person nominated, or, in their absence, by members from a neighbouring State or States, to the effect that the person nominated has the qualifications required by the Constitution and desires to become a member of the Association, and recommending his admission as a member.

All nominations thus made or approved shall be reported by the Council to the Association, and all whose names are reported shall thereupon become members of the Association; *provided*, That if any member demand a vote upon any name

thus reported, the Association shall thereupon vote thereon by ballot.

Several nominees, if from the same State, may be voted for upon the same ballot; and in such case placing the word "No" against any name or names upon the ticket shall be deemed a negative vote against such name or names, and against those only. Five negative votes shall suffice to defeat an election.

During the period between the Annual Meetings, members may be elected by the Executive Committee upon the written nomination of a majority of the Vice-President and members of the Local Council of any State.

*Article V.*—All members of the Conference adopting the Constitution, and all persons elected by them upon the recommendation of the committee of five appointed by such Conference, shall become members of the Association upon payment of the annual dues for the current year herein provided for.

#### BY-LAWS.

*Article VI.*—By-Laws may be adopted at any Annual Meeting of the Association by a majority of the members present. It shall be the duty of the Executive Committee, without delay, to adopt suitable By-Laws, which shall be in force until rescinded by the Association.

#### DUES.

*Article VII.*—Each member shall pay five dollars to the Treasurer as annual dues, and no person shall be qualified to exercise any privilege of membership who is in default. Such dues shall be payable, and the payment thereof enforced, as may be provided by the By-Laws. Members shall be entitled to receive all publications of the Association free of charge.

#### ANNUAL ADDRESS.

*Article VIII.*—The President shall open each Annual Meeting of the Association with an address, in which he shall communicate the most noteworthy changes in statute law on points of general interest made in the several States and by Congress during the preceding year. It shall be the duty of the member of the General Council from each State to report to the President, on or before the first day of May, annually, any such legislation in his State.

## ANNUAL MEETINGS.

*Article IX.*—This Association shall meet annually, at such time and place as the Executive Committee may select, and those present at such meeting shall constitute a quorum.

## AMENDMENTS.

*Article X.*—This Constitution may be altered or amended by a vote of three-fourths of the members present at any Annual Meeting, but no such change shall be made at any meeting at which less than thirty members are present.

## CONSTRUCTION.

*Article XI.*—The word "*State*," whenever used in this Constitution, shall be deemed to be equivalent to *State, Territory*, and the *District of Columbia*.

## BY-LAWS

## MEETING OF THE ASSOCIATION.

I.—The Executive Committee, at its first meeting after each Annual Meeting, shall select some person to make an address at the next Annual Meeting, and not exceeding six members of the Association to read papers.

II.—The order of exercises at the Annual Meeting shall be as follows:—

- (a) Opening Address of the President.
- (b) Nominations and Election of Members.
- (c) Election of the General Council.
- (d) Reports of Secretary and Treasurer.
- (e) Report of Executive Committee.
- (f) Reports of Standing Committees.
  - On Jurisprudence and Law Reform ;
  - On Judicial Administration and Remedial Procedure ;
  - On Legal Education and Admissions to the Bar ;
  - On Commercial Law ;
  - On International Law ;
  - On Publications ;
  - On Grievances.
- (g) Reports of Special Committees.
- (h) The Nomination of Officers.
- (i) Miscellaneous Business.
- (j) The Election of Officers.

The address, to be delivered by a person invited by the Executive Committee, shall be made at the morning session of the second day of the Annual Meeting.

The reading and delivering of essays and papers shall be on the same day, or at such other time as the Executive Committee may determine.

III.—No person shall speak more than ten minutes at a time or more than twice on one subject.

A stenographer shall be employed at each Annual Meeting.

IV.—Each State Bar Association may annually appoint delegates, not exceeding three, in number, to the next meeting of the Association. In States where no State Bar Association exists, any City or Country Bar Association may appoint such delegates not exceeding two in number. Such delegates shall be entitled to all the privileges of membership at and during the said meeting.

V.—At any of the meetings of the Association, members of the Bar of any foreign country or of any State who are not members of the Association may be admitted to the privileges of the floor during such meeting.

VI.—All papers read before the Association shall be lodged with the Secretary. The Annual Address of the President, the reports of committees, and all proceedings at the Annual Meeting shall be printed; but no other address made or paper read or presented shall be printed, except by order of the Committee on Publications.

Extra copies of reports, addresses, and papers read before the Association may be printed by the Committee on Publications for the use of their authors, not exceeding two hundred copies for each of such authors.

The Secretary and the Chairman of the Executive Committee shall endeavour to arrange with the Smithsonian Institution, or otherwise, a system of exchanges by which the *Transactions* can be annually exchanged with those of other associations in foreign countries interested in jurisprudence or governmental affairs; and the Secretary shall exchange the *Transactions* with those of the State and Local Bar Associations; and all books thus acquired shall be bound and deposited in the charge of the New York City Bar Association, subject to the call of this Association, if it ever desires to withdraw or consult them, if the former Association agrees to such deposit.

The Secretary shall send one copy of the Report of the proceedings of this Association to the President of the United States, and to each of the Judges of the Supreme Court thereof, and to the Library of the State Department, and of the Department of Justice thereof, and to the Library of Congress, and the Library of the Supreme Court thereof, and to the Governor, and to the Chief Judge of the Court of last resort of each State, and to the State Librarian thereof, and to all public law libraries, and other principal public and college libraries in the United States, and to such other persons or bodies as the Executive Committee may direct.

No resolution complimentary to an officer or member for any service performed, paper read, or address delivered shall be considered by the Association.

#### OFFICERS AND COMMITTEES.

VII.—The terms of office of all officers elected at any Annual Meeting shall commence at the adjournment of such meeting, except the Council, whose term of office shall commence immediately upon their election.

VIII.—The President shall appoint all committees, except the Committee on Publications, within thirty days after the Annual Meeting, and shall announce them to the Secretary, and the Secretary shall promptly give notice to the persons appointed. The Committee on Publications shall be appointed on the first day of each meeting.

IX.—The Treasurer's Report shall be examined and audited annually, before its presentation to the Association, by two members to be appointed by the Chairman of the Executive Committee.

X.—The Council and all standing committees shall meet on the day preceding each Annual Meeting, at the place where the same is to be held, at such hour as their respective Chairmen shall appoint. If at any Annual Meeting of the Association any member of any committee shall be absent, the vacancy may be filled by the members of the committee present.

The Secretary of the Association shall be the Secretary of the Council.

XI.—The Committee on Publications shall also meet within one month after each Annual Meeting, at such time and place as the Chairman shall appoint.

XII.—Special meetings of any committee shall be held at such times and places as the Chairman thereof may appoint. Reasonable notice shall be given by him to each member by mail.

The travelling and other necessary expenses incurred by any committee, standing or special, for meetings of such committee, during the interval between the Annual Meetings of the Association, shall be paid by the Treasurer, on the approval and by the order of the Executive Committee, out of such appropriation, as to the Executive Committee may seem necessary in each case, on previous application in advance of its expenditure.

All committees may have their reports printed by the Secretary before the Annual Meeting of the Association; and any such report, containing any recommendation for action on the part of the Association, shall be printed and shall be distributed by mail by the Secretary to all the members of the Association at least fifteen days before the Annual Meeting at which such report is proposed to be submitted.\*

It shall be the duty of each Vice-President and member of the General Council of this Association to endeavour to procure the enactment by the legislature of their State of each and every law recommended by the Association, and the Secretary shall furnish them with copies of each and every recommendation and draft of bill, when there shall be such draft; and whenever this Association shall by resolution recommend the enactment of any law or laws, the Secretary shall, as soon as possible, furnish a copy of the resolution to the President of each State Bar Association, with the request of this Association that such State Bar Association shall co-operate with the local Vice-President and member of the General Council of this Association in having a bill introduced in the legislature of its State containing the subject-matter recommended by such resolution, and use proper means to procure the enactment of the same into law. In every State where there is no State Bar Association, a copy of such resolution with a similar request, shall be sent to the President of the Bar Association of the principal city in such State; and in every instance where the

\* The following resolution was adopted on August 30th, 1889: \*

"Resolved, That any standing or special committee hereafter reporting necessary legislation, shall prepare a bill embodying their views, for the approval of the Association."

form of bill has been recommended with the resolution, a copy of such form of bill shall also be sent with the resolution.

#### ANNUAL DUES.

XIII.—The Annual Dues shall be payable at the Annual Meeting in advance. If any member neglects to pay them for any year at or before the next Annual Meeting, he shall cease to be a member. The Treasurer shall give notice of this By-Law, within sixty days after each meeting, to all members in default.

A member who has been dropped from the roll for non-payment of dues may be restored to membership by the Executive Committee upon the payment of all back dues. *Provided*, such restoration shall be recommended by a member of the Local Council of his State, or in their absence, at an Annual Meeting, by any two members of the Association.

XIV.—(1.) A Section of the Association, to be known as the Section of Legal Education, is hereby established, which shall meet annually in connection with the Meeting of the Association, but not during such hours as the Association is in session.

(2.) Its object shall be the discussion of methods of Legal Education, and it may make recommendations to the Association, which shall be referred by the Association to the Committee on Legal Education.

(3.) The proceedings of the Section may be published from time to time, at the discretion of the Executive Committee, and on the recommendation of the Committee on Publications.

(4.) All members of the Association, who desire, may enrol themselves as members of the Section, and persons not eligible for membership in the Association, but who are engaged in teaching law, may be admitted to the privilege of the floor at any meeting of the Section, by vote of the Section.

(5.) The Section shall be organised by the appointment of a Chairman and Secretary, at its first session; and a Chairman and Secretary shall thereafter be elected annually by the Section.

(6.) A Section of the Association, to be known as the Section of Patent Law, is hereby established, which shall meet annually in connection with the meeting of the Association, but not during such hours as the Association is in session.

(7.) Its object shall be to discuss the subject of the law and practice relating to patents. It may report to the Association and matters relating to patents may be referred to it.

(8.) The proceedings of the Section may be published from time to time, at the discretion of the Executive Committee, and on the recommendation of the Committee on Publications.

(9.) All members of the Association who desire, may enrol themselves as members of the Section.

(10.) The Section shall be organised by the appointment of a Chairman and Secretary by the Section, and a Chairman and Secretary shall be thereafter annually elected by the Section for the year commencing upon the final adjournment of its meeting.

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## VII.—CURRENT NOTES ON INTERNATIONAL LAW.

### *Public International Law.*

#### **Intervention.**

There have been, during the past few months, several very striking illustrations of the much abused principle of Intervention. All of them merit the attention of the International Lawyer as well as of the practical politician. In China, in Armenia, in Madagascar and in Nicaragua there have been instances of that species of foreign interference, of which "Historicus" has said: "Its essence is illegality and its justification is its success."

Perhaps the most serious and significant case is the famous protest against the territorial provisions of the Chino-Japanese Treaty of Simonoseki signed on the 16th of April. This convention appears to have stipulated for:—1. The Independence of Korea. 2. The permanent retention by Japan of the conquered territory in Manchuria, East of the Liao River. 3. The Cession of Formosa. 4. An indemnity and, according to some reports, probably without foundation, an offensive and defensive alliance between the contracting Powers.\*

\* *Times*, 16th April, 1895.



On the 23rd of April, after much irresponsible and hysterical declamation on the part of the Continental Press, the Governments of Russia, France and Germany lodged a formal protest against the proposed annexation by Japan of the Liao-Tung Peninsula.\*

The interesting problem as to how far moral suasion would be supplemented by practical coercion was fortunately solved early in May by the Japanese Government returning a favourable answer to the protest. "Deferring to the friendly counsels of France, Russia, and Germany, Japan renounces the definitive possession of the Feng Tien (Liao-Tung) Peninsula, including Port Arthur."† It would appear that the consideration for this surrender by Japan will be an increase of the indemnity. Ratifications of the Treaty as originally framed, were however exchanged about the 10th of May, so that the modifications suggested by the three European Powers must be the subject of future negotiations between the Treaty States. No more typical case of "Intervention" has occurred in recent years, the most noteworthy feature about it being the fact that it was not an act of the European Concert, but of a strangely assorted selection of Continental Powers. It seems clear that Japan has not undertaken to evacuate the conquered territory until the Indemnity has been paid, so that it is more than probable that there is yet a second act to be played in this interesting drama.

As regards the Intervention of the Powers in Armenia, there was undoubtedly a very solid basis for it, whatever may be its results. Unless a statute of limitations is to be recognised as nullifying International Treaties after the lapse of a few years from their execution, there was certainly ground for the European joint Note to the Porte on the subject of the alleged Armenian

\* *Times*, 25th April.

† *Times*, 7th May.

barbarites. The Commission appears to have investigated the matters thoroughly in the light of Articles 61 and 62 of the Treaty of Berlin, as well as of the general interests of civilisation. Information is at present meagre, and we must await the final Report of the Commission, but there is no doubt that a joint scheme of Reforms has been drawn up by the intervening Governments and presented to the Sultan for serious consideration.\* That a recrudescence of the eternal Eastern Question in its acute phase may be thus avoided is a consummation devoutly to be wished.

The French war (or is it, as in the case of China in 1884, merely an *état de représailles*?) in Madagascar involves too far reaching questions to be discussed here at length. We await with great interest the publication of the diplomatic correspondence between our own and the French Government as to the non-recognition of the Hovas as belligerents.

The recent Nicaraguan episode is an instance not so much of ordinary Intervention as of Reprisals or Retorsion. The facts are very clear. In the course of last summer the Nicaraguan Government unlawfully and unwarrantably seized the British Vice-Consul at Bluefields and about twenty other British subjects, and after detaining or imprisoning them, expelled them from the country.

Nemesis rapidly overtook the Republic in the shape of a demand by the British Government for the payment of an indemnity of £15,500. After repeated delays by Nicaragua, in the vain hope that the United States would invoke the Monroe Doctrine in its favour, Admiral Stephenson, with several vessels of the Pacific Squadron, appeared at the port of Corinto and delivered an ultimatum in these terms: "I have received orders from Her Majesty's Government

\* See *Times*, 13th and 14th May.

"to occupy Corinto and to seize all vessels flying the Nicaraguan Flag, and to hold the same until such time as the Nicaraguan Government has complied with the demands of the British Government. . . . I have constituted Captain Trent, of the *Royal Arthur*, governor of the port." \*

On the 27th April, Corinto was accordingly occupied by a force of blue-jackets, and the British Flag was hoisted over the Custom House.†

The Republican Government protested against this step as "highly offensive to its dignity and independence, and persisted in proposing Arbitration, or any other means recognised by the Law of Nations, for the settlement of questions in dispute."

Finally, however, being convinced that there would be no active protest on its behalf by the United States Government, it agreed to pay the indemnity demanded in London within a fortnight, and the undertaking was guaranteed by the neighbouring Republic of Salvador. The British Fleet thereupon left Corinto on the 5th May, after gravely saluting the Nicaraguan Flag.‡

There are many precedents in the history of International Law for the general principle involved in this case of Reprisals. Coercive Intervention has long been looked upon as justifiable in cases where one State has been guilty of what Mr. Secretary of State Webster once aptly called "Summary, sanguine, or undue punishment of citizens" of another State (see Wharton's *Digest*, I., § 546), or of any arbitrary or capricious interference with such citizens. The present case was aggravated by the fact of one of the molested British subjects being a diplomatic representative.

The well-known Don Pacifico Case, in 1849, was somewhat analogous to the present one, but the coercive

\* *Times*, 26th April, 1895.

† *Times*, 29th April.

‡ *Times*, 7th May.

measures then took the shape of an Embargo. Many of the cases of Pacific Blockade were also very similar, but none of them involved the landing of an armed force or the actual assumption of organised control over territory of the offending State, as in the recent Corinto affair (see generally *Law Magazine and Review*, Vol. XIV., p. 109: "*Some recent Incidents on International Law*," and all the standard text-books under the head of *Pacific Blockade*).

The armed intervention of France in Mexico, in 1861, is perhaps a closer precedent. France, Spain, and Great Britain had on the question of the non-payment of Mexican Bonds notified to Mexico that "it was necessary to resort to positive measures to demand a more efficacious protection of the persons and goods of the subjects, as well as for the fulfilment of the obligations contracted by Mexico to such subjects."

Great Britain and Spain did not however see fit to actively assist France in her armed interposition, and the French Government actuated, as it undoubtedly was, by other motives than those indicated in the declaration, somewhat justified a deprecatory resolution passed by the U.S. House of Representatives on the subject (see Calvo: *Droit Int.*, 3rd edition, Vol. III., 50; and Wharton's *Digest*, § 318; also compare the case cited by Wharton, at § 321).

The most remarkable precedent, however, is one which occurred in 1854, curiously enough also in connection with Nicaragua. The people of San Juan or Greytown, in the Mosquito territory of Nicaragua, had refused to apologise and give satisfaction to the United States for "gross indignities to a United States diplomatic representative," and damage done to the property of United States citizens. Thereupon the commander of the United States man-of-war *Cyane*, acting under Government orders, gave notice that

unless the necessary reparations were made within a specified time, he would bombard the town.

Eventually this was actually done, and resulted in an "almost total destruction of the buildings, though no lives were lost." The whole affair was justified by the Secretary of State, Mr. Marcy, as "sustainable by International Law" (see Wharton's *Digest*, § 224A, especially p. 596). The coincidence between this and the present case, amply accounts for the policy of *laissez-faire* adopted towards our Government by the United States in the Corinto affair. It should be observed that the British Government has never pretended to claim any territorial rights in the Mosquito Territory, which is "part of the political administration and organisation" of Nicaragua (see *U.S. Correspondence, Times*, 4th January, 1895).

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#### Arbitration.

Mr. Cremer's memorial in favour of general arbitration in disputes between the United States and Great Britain, signed by 354 members of Parliament, has been presented to the President and Congress of the United States, and has been ordered to be printed in the *Congressional Record* (see *Times*, 7th March, 1895).

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#### Private International Law.

##### Domicile.

An interesting instance of the value of testamentary dispositions as evidence of the Intention necessary to effect a change of Domicile, was afforded by the recent case of *In re Garden, deceased*, which appears to be reported only in the *Times L.R.*, Vol. XI., p. 167. The deceased testatrix left England in 1874, and travelled on the Continent with her sister, till the latter's death in Paris in 1883. The testatrix subsequently made her will and two codicils in English

form, as prepared in England by an English solicitor. In her second codicil, which was made at Florence, she described herself as a "British subject at present residing at Florence." Chitty, J., held that her domicile remained English at the time of her death in Florence in 1893, and appears to have made some very instructive remarks on the great weight which should be attached in such cases to the solemn testamentary dispositions of a testator. He laid stress upon the contents of the will and codicils as indicating an intention on the part of the deceased to retain her English domicile and to have the succession to her property regulated by English Law.

Compare on this point the well known case of *Doncet v. Geoghan*, 9 Ch. D. 441; and see also *Wilson v. Wilson*, L.R. 2 P. and M. 436.

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#### Foreign Immovables.

The curious case of *In re Piercey, Whitwham v. Piercey*, 1895, 1 Ch. 83, was briefly alluded to in our last issue, but merits a more detailed examination. The material facts were these. The testator gave all his real and personal estate to trustees upon trust for sale and conversion, and to hold the proceeds after a life estate to his widow (*inter alia*) for his children for their respective lives with remainder to their respective issue. A large part of the real property was land in Sardinia. The trustees sold part of this. By the Italian Code, the "trust substitutions" in remainder were illegal, and it was contended that the will was so far inoperative. The Court held: (a) that the direction to sell was good, even by Italian Law; (b) when once the sale was effected, the property became movable, and English Law would govern the validity of subsequent trusts of the proceeds of sale; and (c) that until sale of any part of the land, the Italian Law would apply, and the claim of the

person entitled to the income under the will would *seem* have to conform to the requirements of Italian Law. Hence as regards the gift for life to the widow she would validly take as "usufructuary" by Italian Law; but as regards the validity of the trust remainders, after the life interests given to testator's children, this would possibly depend upon whether the sale was carried out before the death of the parents. At any rate, *prima facie* by Italian Law, so long as the property remained land, the remainders were void as "trust substitutions." On this question, however, some of the tenants for life under the will elected to stand by the will in any case; and as regards the only one who raised any question, the Court held that there was no need at present to decide as to any conflict between himself and his children.

The facts are not reported as fully as could be desired. It does not, for instance, clearly appear whether the Testator was a British subject and domiciled in England, though this was presumably the case.

The case is, on the whole, a very remarkable one, and is in some respects a new authority without previous precedent.

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#### Other Cases.

The case of *N. W. Bank v. Poynter, Son, and Macdonald*, referred to in our last issue, is now reported in L.R. 1895, Ap. Cas. 56. The case of *Canterbury v. Wyburn and Others* is reported fully in L.R. 1895, Ap. Cas. 89.

A decision of some interest on International Copyright is to be found in *The "Morocco Bound": Syndicate v. Harris*, in 1895, 1 Ch. 534.

J. M. GOVER.

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## VIII.—NOTES ON RECENT CASES (ENGLISH).

**The Law Courts and Rival Commercial Productions.**

**A**N action would lie for falsely disparaging another's goods where special damage resulted. In the case of *Heavens v. Harlow*, 5 Q.B. 633, Lord Denman in the Queen's Bench Division, in 1844, said that if such actions would lie, where special damage was not alleged and proved, a wide door would be open to litigation, and the Courts would be constantly occupied in trying the superior merits of rival productions. In this way the Court would be turned into a machinery for advertisements of rival productions, by pronouncing judicial decisions on their merits. These remarks arose out of the recent case of *White v. Mellin* on Appeal to the House of Lords. The Respondent was the proprietor and manufacturer of a food for infants, known as "Mellin's Infants' Food," and the Appellant, a chemist, at Portsmouth, who sold, among other things, Respondent's food. The Appellant was likewise the proprietor, though not the manufacturer, of a food known as "Dr. Vance's Food for Infants and Invalids." In order to promote the sale of this food the Appellant affixed to, amongst various other articles in his shop, a label on the Respondent's food, stating that the public were recommended to try Vance's Food "as being far more nutritious and healthful than any other preparation yet offered." The Respondent objected to this, and claimed an injunction to restrain the Appellant from selling his (Mellin's) food otherwise than under the original labels or wrappers, and damages were likewise asked for. The Divisional Court dismissed the case, Mr. Justice Romer being of opinion that the advertisement or label was



a mere puff by the Appellant of his particular goods and did not give any legal claim to the Respondent for an injunction or damages. This decision was come to on Respondent's evidence, and the case was thereupon taken to the Court of Appeal, when a new trial was ordered in order that the Appellant's evidence should be heard. The Appellant (White) took the case to the House of Lords, and there the Lord Chancellor pointed out that the question was, had the Appellant disparaged the Respondent's goods, and had such disparagement caused and resulted in damages? The statement that the food was more nutritious and healthful than any other article offered to the public was a general statement applying not only to the Respondent's food, but to all other goods. There was no evidence as to whether the alleged disparaging statement of the Appellant had injured or was calculated to injure the Respondent. It was impossible to say whether damage was a necessary consequence of the label. He (the Lord Chancellor) doubted it very much. The judgment of Mr. Justice Romer was accordingly restored and that of the Court of Appeal reversed. The decision in *Heavens v. Harlow* (*supra*) and many other cases dealing with these questions of disparagement and statements concerning tradesmen and professional men, are given in Addison on Torts, where it is stated that if one tradesman will pretend to be a greater artist than others, it is lawful for them to support their own credit in the same way, and consequently it is not actionable for one tradesman to depreciate the wares and merchandise of another in comparison with his own. So long as it is a mere puff by one of two rival tradesmen, recommending his own articles in preference to those of another, it is defensible on account of the interest the defendant has in the matter; but to say generally of a tradesman that he is in the habit of selling goods which he knows to be bad is actionable.

**Income Tax and Debentures Issue Expenses.**

One of the trust companies once unsuccessfully contended that the expense of issuing debentures, whereby they raised money for the purpose of carrying on their business of financing other concerns, ought to be allowed in deduction from the amount of their assessment, under Schedule D, as being an expense legitimately connected with, and arising out of, their trade as financiers. The case was that of *The Texas Land and Mortgage Company, Limited* (Appellants) v. *Hotham*, Surveyor of Taxes (Respondent), x. T.L.R. 337. The question was as to deduction of expenses in estimating income. A Company had been formed for the purpose of investments in Texas, and their business consisted in lending out money on the security of land in Texas or elsewhere, and they raised money partly by the issue of debentures, in issuing which they incurred expenses to brokers and in other ways. The Company claimed to deduct these expenses as part of the expense of carrying on their business, as before they could lend money they had to raise it. This claim to deduction was rejected by the Commissioners, as they deemed the expenses to be rather expenses of raising capital. The Court held that the Company raised money by shares to lend it, and to increase their capital raised further money by debentures. The expenses of thus increasing their capital could not, therefore, be deducted. Such expenses were simply the expense of borrowing money for the purposes of the Company. If their claim was allowed, they might as well claim to deduct the expense of floating the Company or of "underwriting" shares. A Scotch case seems also to bear on the same topic, *Arizona Copper Co. v. Smiles*, 29 Sco. L. Rep., 134. There it was held that where a Company borrows money to be employed in its business, and covenants to pay interest and to repay the capital with a bonus, the bonus cannot be allowed as a deduction.

**Liabilities of Directors and Auditors.**

Proceedings were recently taken against the estate of the late Mr. Coleridge Kennard for the return of money received by him as director and shareholder in one of the Bottomley companies. The Company was in liquidation, and the liquidator contended that dividends had been paid out of capital, and that remuneration had been paid to the directors when none was properly due. The estate of the deceased Kennard was ordered by the Court to be charged with the re-payment of such sums of money as had been received by the deceased, but the estate was exonerated from liability to make good monies improperly distributed and not having reached the hands of the deceased. It was assumed in this case that Kennard had not been one of the directors actually present when the improper dividend was determined on, nor a party to it. Therefore, a director who allows funds to be distributed which should have been retained would appear to have been guilty of breach of trust. A director must act fairly and honestly and will then be safe. Though directors are liable for misuse of powers they are not for losses caused by mistake, nor for *bona fide* belief on distribution of dividends that profits permit it. Unless there has been connivance a director would not be responsible for acts of co-directors whereof he has no knowledge. In the case of *Re the London and General Bank* the auditors and directors were held liable for dividends said to have been wrongly distributed. When an auditor's certificate enables dividends to be wrongfully distributed he is guilty of negligence, and the damages he pays will be those resulting from his breach of duty. In order to avoid damages an auditor must fulfil the high standard which ordinary skilled auditors reach. Those who are interested in these points will find further cases in *Carriage Co-operative Association* (27 Ch. D. 322); *Oxford Building Society Case* (35 Ch. D. 502); and *Leeds Estate Build-*

*ing and Investment v. Shephard* (30 Ch. D. 787). This case of *The London and General Bank, Limited*, was taken to the Court of Appeal on April 30th, and there it was held that an auditor of a bank registered under the Companies Acts as a limited company is an officer of the Company within the meaning of the Companies (Winding Up) Act, 1890, and he is, therefore, subject to the jurisdiction of the Court. The accountants, however, dispute this decision, and contend that the provisions of sects. 8 and 10 of the 1890 Act do not extend to auditors, for they profess to be fully covered by the existing common law.

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#### **The Factory Acts and Dangerous Machinery.**

In mercantile circles much interest has been aroused by the decision in the case of *Redgrave v. Lloyd and Sons, Limited*. The dispute was chiefly as to whether industrial machinery came within the Factory and Workshop Act, 1878, as well as the Act of 1891. The dangerous parts of machinery are enumerated in sect. 5 of the Act of 1878, which is amended by sect. 6 of the Act of 1891, and state what is required to be fenced; sect. 96 of the 1878 Act and sect. 37 of the 1891 Act have also some bearing on the subject. The Divisional Court has now decided in the foregoing case that operative or industrial machinery requires to be fenced as well as that which transmits the motion from the prime force. The power of determining what constitutes dangerous machinery which formerly might be settled by arbitration is now transferred to the magistrate, from whose decision there is now an appeal on questions of fact to quarter sessions, and on questions of law to the Queen's Bench Division. The effect of the statutory Sections as amended is general and not confined to a particular class of machinery. When this case was heard in the Divisional Court an appeal

was refused as being a case for a penalty it was a criminal matter, but, of course under the Judicature Act, 1894 (57 and 58 Vict., c. 16, sect. 1), the Court of Appeal can give leave to appeal if it thinks fit to. The present Home Secretary has just now a bill dealing with factories and workshops before a House of Commons Committee, and in connection with this question of dangerous machinery he proposes to leave it to inspectors to declare what is dangerous machinery, but an inspector must give notice to an employer before declaring machinery dangerous. It is professed to give employers a right to appeal to arbitration against any notification by an inspector that parts of his machinery are dangerous, but this right of appeal to arbitration ought to be expressly stated in the Bill and not left subject to the provisions of the existing Acts. The female factory inspectors' advocate (Miss Abrahams), who practises in the London Police Courts, has all her prosecutions and results reported in a female quarterly periodical.

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#### Penalties under the Margarine Act.

The penalties recoverable under the Margarine Act of 1887 must go to the inspector of the local vestry who prosecutes and not to the receiver of the Metropolitan Police district. That was the decision in *the Queen v. Titterton* in the Queen's Bench Division recently. The Court considered that this was the proper decision to make, under the first part of sect. 26 of the Sale of Food and Drugs Act, 1875, incorporated by sect. 12 of the Margarine Act, 1887, and therefore the penalty was payable to the inspector notwithstanding sect. 47 of the Metropolitan Police Court Act, 1839. This decision will apply to cases other than those in the Metropolitan Courts, and have a far reaching result.

T. F. UTTLEY.

## Obiter Dicta.

THE fruits of the Judicature Act are now becoming ripe. The total of causes for hearing during these sittings in the Queen's Bench Division being only 363, and in the Chancery Division 404. No wonder that the Bar is grumbling. The Judicature Act has ruined the Profession.

The fact is, as pointed out by Mr. Justice Manisty some years ago, merchants and traders will not go for justice to the Queen's Courts, on account of the terrible expense and procrastination caused, firstly, by multifarious interlocutory proceedings, permitted before a case is ripe for trial, and secondly, by the power of the Judge, at his own sweet pleasure, to disregard the verdict of the jury, and to enter judgment for the other party.

Merchants and traders go to arbitrators instead of to Courts. Some wise heads restored the Guildhall Sittings in the City, hoping thereby to avert the loss. But "once caught, twice shy," merchants preferred to continue to trust to arbitration, and despised the forensic tinsel. So the poor Judge sat in solitary grandeur in the Guildhall with no cases to try.

Next move was to institute a "Commercial Court," within the Courts in the Strand. But curiously there is no official definition of what is a "Commercial Case." So the Judge may cause vast expense by declining to consider "Commercial" what a reasonable merchant justly deems to be so. Result, very few litigants before such an uncertain tribunal.

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Mr. Justice Mathew diligently tried to advertise the beauties of the "Commercial Court" a few days ago by describing how in one "Commercial Case" the writ was issued

on the 18th April, and the case tried on the 7th May. Doubtless! but one swallow, my Lord, does not make a Summer.

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It should not be forgotten, however, that Mr. Justice Mathew is a man of no common attainments. He is a first rate commercial lawyer, and (barring Royal Commissions) if the fortunes of the Bar are to be mended, and the confidence of merchants in our Courts to be restored, it will be due to the master mind of Mr. Justice Mathew. *Nil desperandum Teucro duce, et auspice Teucro.*

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Continental Governments now send their lunatics to England. The cost falling on the maritime county on which the poor sufferer is landed. Of course it is manifestly unfair that England should have to bear the burden of alien paupers and lunatics. The annual cost of lunatics is enormous. Foreign countries must think that we are a nation of lunatics to submit tamely to their impositions.

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Our American cousins refuse to admit all aliens who are likely in any way to become a public nuisance. The American Immigration Act of 1892 prevents the landing of "all idiots and insane persons," and compels the Steamship Companies to return them to the ports whence they first received them. What are we about?

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The marriage of Mr. Brinckman, a divorced man, with Miss Linton, has caused the further ventilation of the old question whether a Chancellor of a Diocese has power to grant marriage licences and other Canonical dispensations against the will of his Bishop. Here the Bishop of London ordered the Chancellor not to issue licences for the re-marriages of persons whose former marriages had been dissolved by the English Law. To discuss the subject is merely flogging a dead horse. It has again and again been

decided that in all such matters the Chancellor is a free lance. The poor Bishops must grin and bear it.

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The question of re-marriage of divorced parties has found a place in the discussions of Convocation, and may produce a split in the Established Church. The present law is a blunder. The "Act to amend the law relating to Divorce and Matrimonial Causes in England" (20 & 21 Vict., c. 85) went too far. It should have modified its sect. 58 and allowed re-marriage in a Church or Chapel to the innocent party only.

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The enquiry of the Board of Trade into the complaint of the inhabitants of the South of London as to the alleged lack of water during the month of March has just been completed. The enquiry was held under 15 & 16 Vict., c. 84, which enacts that "If at any time complaint as to the quantity or quality of the water supplied by any Company for domestic use be made to the Board of Trade by memorial in writing, signed by not less than twenty inhabitant householders paying rents for and supplied with water by the Company, it shall be lawful for the Board of Trade, at any time within one month after the receipt of such complaint, to appoint a competent person to enquire into and concerning the ground of such complaint, and to report to the Board of Trade thereon."

Considering the manner in which the Public Acts and the Private Acts relating to the various Water Companies supplying the Metropolis are drawn, it is by the merest chance of good fortune that the Board of Trade were able to discover clause 9 in the above-mentioned Public Act enabling them to enquire into the grievances of the long-suffering ratepayers. It is unfortunate, however, that there should be no power vested in the person holding such



enquiry to administer an oath to the witnesses who come before him. Allegations, moreover, seem to have been made that officials of one of the Water Companies visited the district whence the memorial emanated and frightened the various signatories from appearing as witnesses.

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If such be true, it places the Water Company in question in a still more equivocal position. There can be no doubt that during the past winter the supply of water was lamentably short, and the Companies do not appear to have bestirred themselves to remedy the existing evil, save by putting up a few standpipes in some of the streets. They did not, however, forget to apply for payment of their water rate when it was due, and most persons paid the demand. Here is an extraordinary state of things which could happen nowhere but in England. Contract is made between A. and B. that A. shall supply B. with water in consideration of B. paying A. so much money. No water is supplied, yet A. still claims the money from B., and poor, long-suffering, law-ridden B. pays the money. Is not this an inducement to A. never to supply water?

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If our legislators would leave the Welsh Church to slumber in peace, and bestir themselves to remedy some actual grievances we should all be the better for it, and the long-suffering ratepayer would no longer be defrauded by a *troupe* of speculators called a Water Company.

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The recent case of *Rooke v. Dawson* [1895] 1 Ch. 480, is interesting to those who conduct, and those who pass (or fail to pass) examinations. It seems to shew that, in the absence of any express stipulation to that effect, there is no contract to give a scholarship to the candidate who obtains the highest marks in the scholarship examination. The case carries *Reg. v. Hertford College*, 3 Q.B.D. 693 (1878), a little further. The

drift of that case was that examiners might reject a candidate for examination, if he was not qualified for election; *Rooke v. Dawson* would go to shew that in such a case, even if he were examined and gained the highest marks, the electors need not elect him. The question is germane to one which appears to have arisen in America, but not in England. The Supreme Court of New York held that a college had no right arbitrarily to refuse to examine a student for a degree, as there was an implied contract to grant the degree on the conditions being fulfilled. The Court would not review a definite reason alleged, but in the particular case it was an arbitrary refusal (*Law Journal*, 27th June, 1891, p. 439). The nearest case in England is a very old one in 1312, in which a mandamus issued to the University of Cambridge to allow Roger Baketon to take his degree (Sir T. Raym., 109).

#### THE FINANCES OF COSTA RICA.

*To the Editor of "THE LAW MAGAZINE."*

SIR,—The Republic of Costa Rica has not yet paid its interest on the "A" or "B" bonds, due last January, nor have we yet any advices that the dividends due in July next are forthcoming. May I ask are those Governments of Europe, or of America, who honestly meet their own just obligations, going to allow any repudiation on the part of a third-rate Power?

It has frequently been laid down that a State is bound to support the claims of her subjects who are unsatisfied creditors, or bond-holders, of other States. Yet it is a fact that Governments, as a rule, object to assist their subjects in obtaining redress from foreign States in the matter of loans; although they frequently support the complaints of subjects who have suffered from foreign Governments in other ways. In principle there is no difference between the two classes of

wrongs, and, as Sir Robert Phillimore expresses it, in his book on International Law, "The right of interference on the part of a State, for the purpose of enforcing the performance of justice to its citizens from a foreign State, stands upon an unquestionable foundation when the foreign State has become itself the debtor of these citizens." The only question for the consideration of a Government is whether it will enforce this right or not. The late Lord Palmerston distinctly laid it down in 1848 in a circular letter to British representatives abroad, that "There can be no doubt whatever of the perfect right which the Government of every country possess to take up as a matter of diplomatic negotiation any well-founded complaints which any of its subjects may prefer against the Government of another country, or any wrong which, from such foreign Government, those subjects may have sustained . . . the British Government has considered that the losses of imprudent men, who have placed mistaken confidence in the good faith of foreign Governments, would prove a salutary warning to others, and would prevent any other foreign loans from being raised in Great Britain, except by Governments of known good faith and of ascertained solvency. But nevertheless, it might happen that the loss occasioned to British subjects by the non-payment of interest upon loans, made by them to foreign Governments, might become so great that it would be too high a price for the nation to pay for such a warning as to the future, and in such a state of things it might become the duty of the British Government to make these matters the subject of diplomatic negotiation." The right, therefore, of a Government to protect its subjects in all cases of dishonesty or insolvency of foreign Governments is well recognised by Great Britain; but it is to be regretted that her internal policy has prevented her from exercising it often. Certainly there never was a time in the history of

this country when more default has been found among its foreign debtors. The mere allegation on the part of a foreign State that she is unable to meet her liabilities should not be too freely accepted by her creditors, especially when there are vast natural resources, as in the case of Costa Rica, which might be conceded to European trustees on behalf of such creditors, or otherwise dealt with.

I am, Sir, your obedient servant,

A BARRISTER.

Lincoln's Inn, May 1st, 1895.

## Books Received.

*The Law and Practice of Rating.* By Edward James Castle, Q.C. Third edition. Stevens and Sons (Lim.), London.

*The Principles of Rating Practically Considered.* By Edward Boyle, Barrister-at-Law, and G. Humphreys-Davies, Fellow of the Surveyor's Institution. Second edition. Clowes and Sons (Lim.), London.

*Mayne's Treatise on Damages.* By John D. Mayne, Barrister-at-Law, and Lumley Smith, Q.C., Judge of the Westminster County Court. Stevens and Haynes, London.

*Outlines of the Law of Torts.* By Richard Ringwood, Barrister-at-Law. Stevens and Haynes, London.

*A Manual of the Principles of Equity.* By John Indermaur, Solicitor. Geo. Barber, Law Students' Journal Office, London.

*The Student's Guide to the Principles of the Common Law.* By John Indermaur and Charles Thwaites. Geo. Barber, Law Students' Journal Office, London.

*The Student's Guide to Constitutional Law and Legal History.* By the same.

*The Student's Guide to the Principles of Equity.* By the same.

*The Student's Guide to Procedure and to the Law of Evidence.* By the same.

*Test Questions on Various Works.* By the same.

*A Treatise on the Law of Res Judicata.* By Hukm Chand, M.A. Clowes and Sons (Lim.), London.

*A Summary of the Law of Land and Mortgage Registration.* By R. Burne Morris, M.A., LL.B. Clowes and Sons (Lim.), London.

*Notes on Land Transfer in Various Countries.* By C. Fortescue-Brickdale, B.A. Horace Cox, Law Times Office, London.

*Contempt of Court, Committal and Attachment, with the Practice and Forms.* By James Francis Oswald, Q.C. Second edition. Clowes & Sons (Lim.), London.

*The Parish Councillor.* By F. Rowley Parker. Knight & Co., 90, Fleet Street.

*The Insurance Agent.* By John A. Finch. The Rough Notes Company, Indianapolis.

*Digest of Insurance Cases.* By John A. Finch. The Rough Notes Company, Indianapolis.

*Car Trusts in the United States.* By Gherardi Davis and G. Morgan Browne, Jr., New York.

*History of Elections in the American Colonies.* By Cortlandt F. Bishop, Ph.D. Columbia College, New York.

*Sources of the Constitution of the United States.* By C. Ellis Stevens, LL.D., D.C.L. Macmillan & Co., London.

*The American Corporation Legal Manual.* By Charles L. Borgmeyer. Honeyman & Company, Plainfield, New Jersey.

*I Mississipiani.* By Guiseppe Caetani. G. Bertero, Rome.

*Les Ministres.* By L. Dupriez. 2 vols. J. Rothschild, Paris.

*Le Système Judiciaire de la Grande Bretagne.* By Count de Franqueville. 2 vols. J. Rothschild, Paris.

*La Faillite et la Liquidation Judiciaire.* By Maurice Travers. V. Giard and E. Brière, Paris.

*Inebriety or Narcomania.* By Norman Kerr, M.D., F.L.S. H. K. Lewis, London.

*Reminders on Company Law.* By Villiers De S. Fowke. Horace Cox, Law Times Office, London.

*Briefless Ballads and Legal Lyrics.* By James Williams. Second series. Adam and Charles Black, London.

*A Manual of Roman Law.* By Daniel Chamier. Swan Sonnenschein and Co., London.

*Infamia.* Its place in Roman, Public, and Private Law. By A. H. J. Greenidge, M.A., The Clarendon Press, Oxford.

*Voet's Titles on Vindicationes and Interdicta.* Translated by J. J. C. Chitty. Printed at the Ceylon Observer Press, Colombo.

*Les Notions Fondamentales Du Droit Civil.* By P. Van Bremmelen. Johannes Müller, Amsterdam.

*Handbook of the Laws of Scotland.* By James Lorimer and Russell Bell, Advocates. Sixth edition. T. and T. Clark, Edinburgh.

*Fath al-Zarib, La Révélation De L'Omniprésent* (Commentary on Mussulman Jurisprudence with the Arabic Text). By L. W. C. Van Den Berg. E. J. Brill, Leyden.

*Parliamentary Government in the British Colonies.* By Alpheus Todd, LL.D., C.M.G. Longmans, Green & Co., London.

*An Introduction to the Study of Anglo-Muhammadian Law.* By Sir Roland Knyvet Wilson, Bart, M.A., LL.M. W. Thacker & Co., London.

*The Indian Law of Insolvency.* By William Griffith. D. E. Cranenburgh, Calcutta.

*List of British Enactments in Force in Native States.* Compiled by J. M. Macpherson, Officiating Secretary to the Indian Legislative Department, Calcutta.

## Reviews.

*Contempt of Court, Committal and Attachment, with the Practice and Forms.* By JAMES FRANCIS OSWALD, Q.C., a Bencher of Gray's Inn, a Member of the Middle Temple and the Northern Circuit. Second edition. London: Clowes & Sons, Limited. 1895.

We are not surprised that Mr. Oswald's treatise on the Law of Contempt has reached a second edition, for it is not only the first book published dealing separately with the subject, but it is at once exhaustive in its treatment and agreeable in its style. It is a commonplace that what is easy reading is often very difficult writing, and under the author's lucidity and charm there lies a vast amount of labour and research. The power of the Courts to vindicate their own authority, the author observes, is coeval with their first Foundation and Institution, and consequently these pages traverse the whole long period of our legal history. They possess, therefore, an interest for the antiquary and historian, as well as for the practitioner. The severest student will think it no demerit that the serious matter in the book is enlivened with many a good story, and spiced with the author's wonted humour. For the authenticity of some of the old favourites high authority is cited, as that of the late Lord Selborne in *Watt v. Ligertwood* (L.R. 2 H.L. Sc. 361), for the story of Prince Henry and Chief Justice Gascoigne, and of a reference verified in the British Museum of the case cited by Lord Justice Lindley in his book on Partnership of the partnership action instituted by one highwayman against another in the Exchequer. The savage character of our early jurisprudence is strikingly illustrated by the reprint of the 33rd Henry VIII., c. 12 (1541), for the execution of judgment to "have the right hand stricken off" for the offence of striking in the king's palace; and several instances are given in which this cruel punishment was actually suffered. As a picture of manners varying from age to age, of the discipline of the Courts, the relation of Bench to Bar, the growing independence of the Bar, and of the attitude of the Bench towards public criticism, the book is full of interest.

In its own practical aspect the book will be found to supply all that can be required. Every modern authority appears to

have been cited, both from the professional reports and from those which appear in the *Times* and other newspapers. Among the latest of these is the singular case on Ambassadorial privilege of *Musurus Bey v. Gadban* (1894, 2 Q.B. 352). The subject is clearly arranged under chapters on Contempts Direct; Contempts Indirect or Consequential; Special Contempts and Imprisonment for Offences within the exceptions to the Debtors' Act, 1869. The procedure and practice are also exhaustively discussed, and the interesting question of privilege from arrest upon Civil Process has a chapter to itself. A memorandum, with two forms, by Mr. Registrar Lavie as to Practice, and a list of General Forms, add to the completeness of the volume. Mr. Oswald's well-known opinion that an appeal should be given in all cases of Contempt will not, perhaps, be shared by all; but there will be general agreement as to the desirability of some statutory limitation to the arbitrary jurisdiction now exercised. Mr. Oswald expresses himself strongly on this point, and records the ineffectual attempts which have been made in this direction, beginning with the Bill introduced by Lord Chancellor Selborne in 1883. To the general reader, and especially to the journalist, the book will be as interesting as to counsel or solicitor.

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*The Law and Practice of Rating.* By EDWARD JAMES CASTLE, Esq., Q.C. Third edition. London: Stevens and Sons, Limited. 1895.

*The Principles of Rating Practically Considered, with a complete digest of all the important cases.* By EDWARD BOYLE, of the Inner Temple, Barrister-at-Law, and G. HUMPHREYS-DAVIES, a Fellow of the Surveyor's Institution, and an arbitrator under appointment of the Board of Trade. Second edition. Clowes and Sons, Limited. 1895.

Both these books are new editions of standard authorities on the important subjects with which they deal, and have just been published in anticipation of the near advent of the sixth quinquennial Metropolitan valuation under the Metropolis Valuation Act of 1869. Mr. Castle limits himself to the Law and Practice of Rating, whereas Messrs. Boyle and Humphreys-Davies write on a wider subject, viz., the Principles of Rating. The respective authors are great authorities on such highly technical and

intricate subjects as Rating and Assessment, not only in so far as these matters apply to the Metropolis itself, but also with regard to their bearing on the vast interests of Railway, Canal, Gas, Water and other great Companies. Mr. Castle (who courteously acknowledges aid from Mr. Robert Frost, Barrister-at-Law, in preparing his new edition) in his preface states that since April, 1879, several undecided points on the Law and Practice of Rating have been settled, more particularly by the recent decision in the House of Lords, when the Lord Chancellor laid down rules for assessing property occupied by public bodies for public purposes. This settlement has enabled Mr. Castle to reduce the bulk of his new edition by virtually omitting the old references to the disputed points; while this is so, he has added references to the mode of rating railways, canals, &c., and has minimised necessary repetition by a system of cross references. He has also introduced for the first time several useful chapters upon Procedure. The plan of Mr. Castle's well digested and excellent work from its first inception has ever been to set out the *ipsissima verba* of important judgments. As a guide to Courts of Quarter Sessions and Assessment Committees, for whose aid legal reports are not always accessible, on pages 607 to 616 will be found a useful appendix of recent decisions given while Mr. Castle's third edition was in the press—notably the judgment in the case of *Hull Docks Co. v. Sculcoates Union*. About two-sixths of his book describe the General Principles of Rating, three-sixths of the book relate to Rating of Different Properties, and the remaining sixth contains the new and useful chapter on Procedure. It is a sure and safe guide, avoiding all speculation as to what the law might be.

Messrs. Boyle and Humphreys-Davies, in their truly monumental re-issue, cover, not only the same ground as Mr. Castle's book, but go beyond it. They introduce not only all the important cases decided during the five years that have passed since their first edition appeared, but they also add reports of a few cases which, though obsolete to some extent as law, are still of value in drawing attention to particular points, chiefly of practice. But the great feature of Messrs. Boyle and Humphreys-Davies' book consists in its masterly treatment of points in the Law of Rating that are still, to some extent, open questions, in that they have not been definitely decided by judgments delivered in the Highest Courts of the country.



Authors who venture into this speculative and somewhat debatable land do so at great risk; they may by adopting such a bold course wreck their work altogether. On the other hand, if they are successful, the influence of their book becomes much greater. Messrs. Boyle and Humphreys-Davies had the courage of their opinions even when publishing their first edition some five years ago, and the success they then met with has encouraged them to adopt, in a higher degree, the same bold methods in their re-issue. True, it may be said, such expressions and comments are mere opinion—mere dicta, and without authority. We think not. For instance, take cognate cases, Lindley on Partnership or Fry on Specific Performance. The opinions expressed in these great works are not only quoted in Court, but the Judges themselves acknowledge their utility in guiding the Bench towards a just decision. Lord Justice Lindley from the Bench recently stated that as everyone was allowed to quote his great work as an authority, he saw no valid reason why he, its author, should alone be debarred from making reference to it? It is within the means of verification of all our readers that Messrs. Boyle and Humphreys-Davies in their first edition, by an *obiter dictum* foreshadowed with almost absolute exactitude the recent decision of the House of Lords in the very important case above mentioned. Further, we are told that soon after the first edition of Messrs. Boyle and Humphreys-Davies's work was published, counsel quoted some of its *obiter dicta* on the hearing of an important case. Counsel on the opposite side objected that such *dicta* were not authoritative, but the learned Judge, who, perhaps, is the most experienced of the whole Judicial Bench in the Law and Principles of Rating, over-ruled the objection, and held that the Court not only approved of the particular expression of opinion, but recognized it as embodying, in lucid language, the very principles by which the Court was guided in such matters. This was, indeed, praise, but it was amply warranted, and we may do well, therefore, to listen with attention to the opinions (though they be so) of authors who have proved themselves so competent.

The book also contains interesting and useful chapters on the question of "How Rent Arises?" This is more an economic than a legal subject, but it is still of some aid to those who wish to make themselves acquainted with principles. From page 1063 to page 1076 an appendix is given of some highly

important railway and other cases that are not reported elsewhere. One of these cases is made more intelligible by a beautifully drawn plan. Procedure is exhaustively dealt with under two aspects: (1) Procedure outside the Metropolitan area; (2) Procedure in the Metropolis. The statutes from 43 Eliz., cap. 2, to 57 and 58 Vic., cap. 53, are given *in extenso* and fill over a hundred pages of closely printed matter, and will prove very convenient for purposes of reference. The Digest of Cases—the authors acknowledge their indebtedness to the proprietors of Fisher's Digest, from which well-known work, by consent, many of the cases have been compiled,—is a veritable labour of Hercules, and fills over five hundred pages of the book. Here the enquirer can find set out, in a beautiful and orderly arrangement, *every* case relating to the subject in which he may be interested. In our opinion, every counsel, solicitor, surveyor, and great company should add both the above books to their libraries. We are convinced that they will never regret the step.

A perusal of the above books leads us to consider two important questions of Rating: First, and the less important, the Railway Companies case, in which it is contended that assessment of Railways and similar great enterprises should be in the hands of some central authority and not left to local assessors, the argument being that it is unfair and unwise to cut up a railway or canal parochially for the purposes of rating. We think, however, that this involves a great principle, and that the Legislature cannot be too jealous against altering the established custom of leaving such matters to local men with local knowledge. Secondly, let us consider the all-important question of the incidence of Rating generally. In matters of Imperial Taxation a man who has at once a small income and is a teetotaler and non-smoker may escape from contributing anything material to the Revenue. Not so, as regards Rating. Every citizen who has to keep a roof over his head, however humble, feels its incidence, and we think that a Royal Commission might well be appointed to consider the justice or otherwise of existing exemptions of persons and property. An ideal Rating Law would so distribute municipal burdens that the Crown, the Great Departments of the State, all Government and other public, or quasi public, buildings should pay a just and equitable proportion of the Rates as well as the humblest citizen.

*Mayne's Treatise on Damages*, Fifth edition. By JOHN D. MAYNE, of the Inner Temple, Esq., Barrister-at-Law, and LUMLEY SMITH, Esq., Q.C., Judge of the Westminster County Court, late Fellow of Trinity Hall, Cambridge. Stevens and Haynes. 1894.

A new edition of a really good Law book is always welcomed by the profession when it is well done. Mayne's *Treatise on Damages* is a work that has acquired, since its first appearance in 1856, a solid reputation as a valuable text-book on the subject of which it treats. Few practical lawyers can dispense with such a work. Damages are the root and branch of every action of tort, as well as of most other forms of action, whether they be on contracts of sale, contracts relating to the tenure of land, the law of carriers, wrongful conversion, &c., &c. Under the old system of pleading it was impossible for a man to acquire proficiency in that art without a good knowledge of the law of damages; and even at the present day the subject is of foremost importance in the consideration of and advising on cases of most kinds that come before counsel for his opinion; because in the first place if the case is not one for damages in some shape or other, it will, of course, be unwise to advise your client to sue, or at all events not without warning him of the risk he incurs.

The fifth edition now before us by the author, Mr. John D. Mayne, assisted by His Honour Judge Lumley Smith, Q.C., bears traces of the care and industry bestowed upon it in the course of revision, and in adding and annotating the cases subsequently to the previous edition. In other respects, the form and arrangement of the work remain as before. Indeed, it would be difficult to suggest an improvement upon it. It appears that just ten years have elapsed since the previous edition, and during that decade many cases of considerable importance have been decided; and, as far as we have been able to examine the present work, they have been added to the new edition; there is, however, one case which we do not find, viz., the case of *Gatty v. Farquharson*, an action of slander and libel, in which an important decision was given by the Court of Appeal (Lord Esher, M.R., and Bowen and Kay, L.JJ.) upon an application on the part of the defendant for a new trial, on the ground that the damages were excessive. The Court came to the conclusion that the damages awarded were so large as to

amount to what the Court termed "punitive damages," and were ordered to be reduced by one-half, or otherwise a new trial to be granted. The case does not, however, appear to be reported either in the *Law Reports* or the *Law Journal Reports*, but it appears in the *Times Law Reports*, Vol. 9, at p. 593. The decision has since been referred to in the Courts upon more than one occasion, and should therefore have been noted in a new edition of a work devoted specially to the subject of Damages, and having a heading in its Index, "New Trial on ground of Excessive Damages." In other respects the new edition appears to have been ably done, and the work will retain its position as one of the best text-books in our Law Library.

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*Outlines of the Law of Torts.* By RICHARD RINGWOOD, Esq., M.A., of the Middle Temple and N.E. Circuit, Barrister-at-Law. Second edition. Stevens & Haynes. London.

This work is, as it professes to be, but an *outline* of the Law of Torts. It comprises in effect the substance of a series of Lectures delivered by the author to the students at the Law Institution, in a course of lectures on the Law of Torts. Amongst the new matter contained in this edition will be found a chapter on Malicious Injuries, and also one dealing with Torts in respect of domestic and family relations. It must not be taken as a Treatise on the *principles* of the law of Torts, for such are but cursorily treated in the twelve chapters of which the work is composed. The statements of law contained in it are (so far as they go) clearly stated, and capable of being readily understood by all who read it. But in a book on the law of Torts a lawyer who seeks for guidance on any particular branch of the subject usually looks for the *principle* underlying the statement of law it contains; and a student should do likewise. He will, however, not always find the principles laid down in the pages of the work now before us. But, then, it does not profess to be anything more than "an outline of the law." It gives definitions and facts to substantiate statements of the law, and in some instances copious *verbatim* extracts from the judgments, but seldom goes to the root of the matter, by stating the principles upon which the law is founded. And this is a defect in a law book, whether it be intended for the use of students or practitioners. As an instance of an exception to

this, however, is the author's statement of the law as to liability for fraudulent prospectus, in which the principle is first very properly stated and followed by reference to leading cases on the subject, and then a concise statement of the law contained in the recent Directors' Liability Act and its effect upon the leading cases previously referred to. If this style had been followed throughout, the book would have been the better for it. As it is, however, the work contains a clear and accurate outline of the law of Torts, readily intelligible to all who read it, and it is one that will be found alike useful and instructive to the law student as to the layman who may desire to obtain a fair knowledge of the outlines of the law of Torts.

*A Manual of the Principles of Equity.* A concise and explanatory Treatise intended for the use of students and the profession. By JOHN INDERMAUR, Solicitor. Third edition. London: Geo. Barber.

There are some authors of Law Treatises who compile their works without acknowledgment from other authors; not so, however, Mr. Indermaur: that gentleman candidly acknowledges the use he has made of the works of other authors, and his candour adds to the merits and value of his work, for he has gone to the highest authorities for his material (or rather the *text-books* of highest authority), viz., the ponderous volumes of White and Tudor's leading Cases in Equity, and Story's Commentaries on Equity Jurisprudence, with the result that he has compiled therefrom a very useful, concise and explanatory Treatise on the elementary principles of Equity Jurisprudence for the use of law students, the third edition of which is now before us. Mr. Indermaur is, if we mistake not, the author of several other works for the use of law students.

The present edition is a considerable expansion upon the previous one, which of necessity involves an increase of some 40 or 50 pages of the text. In addition to which the author has, by way of appendix, inserted in full a copy of the Trustee Act of 1893, which occupies just 30 pages of the work. At page 96 he states as his reason for so doing that considerable reference has been made to it, and the author thought it advisable to recommend students "to go through and study the Act of Parliament itself."

But why this particular Act and no other should be thus dealt with is somewhat inexplicable. There are several other statutes of quite as much importance in relation to other matters in the author's treatise to which a similar observation might well be applied, but the fact is that students prefer to have the pith and marrow of such long statutes picked out for them, and such should be the object of a law student's text-book in dealing with statute law.

In other respects the new edition of this work is an improvement upon the two previous ones. As a work on the elementary principles of equity for the use of law students, the book appears to be thoroughly reliable, and where new light is thrown upon leading cases by recent decisions it is shown in the text, and the cases upon which it is founded are cited in support of it.

The new edition may be conscientiously recommended to students as one in which they will find a clear and concise statement of the elementary principles of equity jurisprudence.

*The Student's Guide to the Principles of the Common Law.*

*The Student's Guide to the Principles of Equity.*

*The Student's Guide to Procedure and Evidence.*

*The Student's Guide to Constitutional Law and Legal History.* By JOHN INDERMAUR and CHARLES THWAITES, Solicitors. London: Law Student Journal Office.

*Test Questions on various works for the use of Articled Clerks.* By the same authors.

Messrs. Indermaur and Thwaites are indefatigable in providing golden roads to learning for aspirants to the legal profession. The quality and quantity of their work require no commendation; they have already obtained an excellent reputation. In the books before us the learned writers ask questions on law, on well-known legal works, such as Williams' Real Property and Prideaux's Conveyancing, and on other leading text-books; they then answer their own questions fully, concisely and lucidly. For the student who desires to work without the aid of a master these treatises will be found extremely valuable. Their plan is also to suggest the books and cases to be read; next to test such reading by questions, and finally to produce and solve a selection of problems actually set at recent examinations. A student about to be examined can hardly fail to derive benefit from a perusal of these books;

or his confidence will be strengthened if he be well prepared, and, on the other hand, if there are weak points in his training these guides will bring them vividly to his attention. We note that in the work on Procedure and Evidence the references to the late Mr. Justice Stephens' Digest are to the fifth Edition, whereas they should have been to the sixth Edition, published in 1893.

*A Treatise on the Law of Res Judicata, including the Doctrines of Jurisdiction, Bar by Suit and Lis Pendens.* By HUKM CHAND, M.A. 1894. London: Clowes & Sons.

The doctrine of *res judicata*, in its application to civil proceedings, forms the subject of this work, which, though written mainly for the benefit of the legal profession in India, to whom it cannot fail to be specially valuable, will, it is believed, also prove useful to lawyers resident in other countries where the doctrine finds acceptance. In view of the somewhat limited scope of the present work, its bulk is certainly rather appalling. As, however, altogether about four thousand cases are cited, and as, moreover, the author presents the branch of law to which his treatise is devoted, by "way of a review of the cases upon a statement of their facts," it is perhaps inevitable that the text alone should comprise 768 quarto pages. We hope, however, that in future editions the skill of the author may enable him somewhat to compress his abundant materials, without of course sacrificing the integrity of his work; otherwise it may eventually become, by the inclusion of new matter, almost too cumbersome and unwieldy for use as a text-book, and run the risk of being consigned to those library shelves where repose encyclopædias, dictionaries, and other works of mere reference. That Mr. Hukm Chand's work merits a very different fate on account of its many excellences of treatment and arrangement, is our honest opinion. In some respects the system upon which the present work is written resembles that which prevails amongst American legal text writers. Thus, it is, throughout, divided into paragraphs, each of which elucidates some principle or rule cognate to the important doctrine under exposition. On the other hand, in accordance with the method to which English Lawyers are perhaps more accustomed, the facts of the cases cited are usually set forth in the text, instead of giving the actual decisions only, the principal authorities on the various points in India and England concerning the scope and application of the doctrine, being, however, carefully grouped

under the respective clauses of the Indian Rule of *res judicata* bearing on those points. The aim of the author has evidently been to make his work a practical, comprehensive and scientific treatise, and certainly it must be admitted that his achievement does not fall far short of it. The text is divided into twelve chapters, which, step by step, expound the branch of law embodied in the doctrine of *res judicata*. A general view of this doctrine is presented in Chapter I., the distinction (not always it seems observed in England) between it and the kindred doctrine of estoppel being there clearly indicated, while the gradual, though still incomplete, recognition of the doctrine of *res judicata* in British India, and in the various Civil Procedure Codes of that country, is carefully explained. The conditions essential to the operation of the doctrine in question are discussed in Chapters II. to VII., where such subjects as Matters in Issue and their identity and determination, the identity of the parties and the jurisdiction of tribunals to pronounce decisions available as *res judicata*, are adequately dealt with. The subjects of judgments *in rem*, and of foreign judgments, are expounded in chapters VIII. and IX.; bar by suit, *lis pendens*, bar by jointness, merger and other cognate matters being reserved for the last three chapters of the work. Most of the English authorities which involve the doctrine of *res judicata* appear to be cited by the learned author. The case of *Caird v. Moss* (33 Ch. D. 22) has, however, eluded his vigilance, while the recent case of *Wegg-Prosser v. Evans* (1894, 2 Q.B. 101), in which *Camberfort v. Chapman* (19 Q.B.D. 229) was disapproved of, and *Drake v. Mitchell* (3 East 251) was followed, is necessarily also omitted as it must have been decided either after the publication of the work or else while it was in the press. The usual tables of contents and of cases precede the text itself, which is immediately followed by 38 pages of Addenda and Corrigenda for which, we fear, the reader will not be very grateful to the author, to whose industry and patience they, however, bear witness. At the end of the volume will be found a fairly good Index, which might, however, with advantage, be somewhat improved by the addition of a greater variety of titles.

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*Reminders on Company Law.* By VILLIERS DE S. FOWKE, Barrister-at-Law. Horace Cox. 1894.

This is another in the useful series of "Reminders" issued from the *Law Times* Office.



- It is not a treatise on Company Law, but a list of cautions which indicate some of the perils besetting the draughtsman's road, much as the danger posts on a Highland pass warn the wayfarer from the false step which may make an end of him in mist or storm. It can be consulted with advantage by anyone called upon to advise on Company Law.

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*Briefless Ballads and Legal Lyrics.* By JAMES WILLIAMS. London: A. and C. Black. 1895.

The first edition of this interesting little book was published in 1881, and being out of print called for this the second edition. The Ballads touch happily on such reported cases as *Mytward v. Weldon* (in which the plaintiff was committed to Fleet Prison for drawing a replication of six score sheets, containing much impertinent matter which might well have been contained in sixteen), and *Willis v. The Bishop of Oxford*. The lighter matter also is well done; "The Vision of Legal Shadows," "The Garden Party in the Temple," and "The Ballade of Lost Law," being particularly good. We commend it to our readers as a pleasant interlude when relaxing the bow for a spare half-hour. The metre runs smoothly, the substance is good law, and a touch of caustic humour enlivens the legal lays. In our opinion it is better in every respect than "Pollock's Leading Cases done into English."

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*Manual of Roman Law.* By DANIEL CHAMIER, of the Inner Temple, Barrister-at-Law. London: Swan Sonnenschein and Co.; New York: Macmillan & Co.

The literature of Roman Law, especially that branch of it devoted to making things pleasant for the student, is, by many, deemed to be ample. Mr. Chamier, undeterred by this state of things, has written "A Manual," and claims for it that it supplies sufficient information to enable a reader to acquire a substantial grounding in Roman Law without encumbering his mind with a mass of obsolete detail. The author, in some two hundred pages, clear both as to style and type, has lucidly explained the salient features of the Law of Persons, the Law of Things, and the Law of Actions. We have carefully perused the little book, and (apart from a printer's error on page 66) we can speak highly of the manner in which the author has

treated his well-worn subject. Professedly, the work is not "deep," and, excellent as the book is, we are nevertheless of opinion that on the whole it is too superficial to be safely relied on by a student as his sole text-book even when going up for the Bar pass in Roman Law. More particularly is this so as regards the law of Landlord and Tenant, of Mortgage, and of Sale, while the law relating to Married Women and the *Dos* requires fuller treatment. Again, now-a-days, there is a tendency on the part of the Examiners, appointed by the Council of Legal Education, to require the Roman Law on a particular subject to be contrasted with the English Law on the same subject, and Mr. Chamier does not afford much information on this head. The test questions inserted throughout the book are judiciously selected, and will prove most useful to the student. When, as we hope will be the case, the author publishes a second edition, it would be well for him to give more frequently than he does the Latin equivalents for many of the terms and expressions used in Roman Law. It would also be an advantage if there were included a short chronological table of political events, with a parallel column giving the dates of the various enactments that became law during the some thousand years that passed from the time of the publication of the *Twelve Tables* till Justinian issued *The Institutes*. A student, just before going up for examination, and after a previous study of either Hunter, Sandars, or Moyle, will find this little book of great assistance in, as it were, focussing in his memory the leading principles of Roman Law.

*A Handbook of the Law of Scotland.* By JAMES LORIMER, Advocate, late Professor of Public Law in the University of Edinburgh. Sixth edition by RUSSELL BELL, Advocate, Sheriff-substitute of Argyllshire. Edinburgh: T. and T. Clark.

This Handbook of the Law of Scotland is to the Scotchman what "My Lawyer, or the People's Legal Adviser" is to the Englishman; being a work intended chiefly for the "non-professional person," though as regards study it is intended to afford a general view of the law and of the legal rights and obligations of Scotchmen, together with the "machinery" of the law (as the author terms it). The best proof that the work has been found useful and in fair demand is the fact that since its first publication in 1859 it has now reached a sixth edition,

which has been revised and edited by Mr. Russell Bell with considerable care and discretion, and its high character as an elementary work upon the law of Scotland has been preserved. Keeping in view the object of the work, it containing a vast amount of useful and valuable information on legal rights and obligations in a condensed and intelligible form, extending to every branch of the law as administered in the various courts of Scotland. Not only to Scotchmen, but to Englishmen, Irishmen, and others, who go to reside in Scotland, the work is indispensable. At the present day, when education has made such wide and rapid strides, every man is desirous of acquiring a general knowledge of the law in the country he adopts as his domicile; it is in fact his duty to do so, for ignorance of the law affords no excuse for a breach of it, either before a civil or a criminal tribunal. The work as now edited appears to be thoroughly reliable.

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*An Introduction to the Study of Anglo-Muhammadian Law.* By Sir ROLAND KNYVET WILSON, Bart., Barrister-at-Law. London: W. Thacker & Co.

This work deals with the body of rules applied by the Civil Courts in India to the determination of certain kinds of dispute among the Muhammadan community, which numbers not much less than a fourth of the population, being 49½ millions according to the census of 1891. Muhammadan Law, of course, concerns an immense body of religious and ethical doctrine accumulated in the course of ages round a nucleus of divine revelation, covering by its precepts the whole range of human action; therefore we think that the author has acted wisely by distinguishing by the prefix "Anglo" that small fragment of the Muhammadan Law which the English Government enforces by its own tribunals. Very thoroughly has the author dealt with this fragment, and to those who desire to make some acquaintance with this branch of Indian Jurisprudence, we recommend the above book with every confidence.

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*The Indian Law of Insolvency, being 11 and 12 Victoria, c. XXI., with an Historical Introduction, Commentaries, and an Appendix of Practical Forms.* By WILL. GRIFFITH, Esq., Barrister-at-Law. Calcutta: D. E. Cranenburg. 1894.

Ever since the days when Lord Macaulay went to the far East, and did so much to introduce Grecian philosophy and

culture amongst the Asiatic youth, strenuous efforts have been made to introduce with the new philosophy large portions of the English law, not only for the benefit of the English who inherit it by birthright, but also for the advantage of the Hindus and Mahomedans. Mr. Griffith, as it is well known, has already provided the Indian and English public with Commentaries on various branches of law and procedure. His most recent publication is upon the Law of Insolvency. The English statute 11 and 12 Vict., c. xxi., regulates the procedure in the three Presidency capitals, while the Code of Civil Procedure does the same service for the country provinces, or the Mufassal. The principles of commercial law apparently are the same for the Mufassal, the Presidency towns, and for all India. Mr. Griffith seems to have collected the decisions of the English Privy Council and those of the Indian Courts with much industry, and to have stated their effect with commendable brevity. The work deserves the attention of those practising in the Indian Courts, to whom it will doubtless prove of considerable service.

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*Lists of British Enactments in force in Native States.* Compiled by J. M. MACPHERSON, of the Inner Temple, Barrister-at-Law, and Deputy Secretary to the Government of India, Legislative Department, Calcuttâ. Printed by the Superintendent of Government Printing, India. Five Vols., 1888—95.

A valuable collection of British enactments concerning Madras and Mysore, Northern India, Hyderabad, Central India, Rajputana and Western India. The volumes, however, are not authoritative, and the Government of India is not responsible for their contents. They are compiled from the Official Gazettes, supplemented by local information obtained through the Foreign Department, and will undoubtedly be found useful by Political Officers and others desirous of obtaining information concerning British enactments in force in Native States. When it is remembered that the Official Gazettes of the Indian Government fill thousands of pages, the benefit of this work will be better appreciated; it will save the lawyer and the politician the labour and trouble involved in referring to the Official Gazettes; and, if used in conjunction with the Codes published by the Legislative Department, which contain the Statutes, Acts, and Regulations mentioned in these volumes, the work

ought to form a complete handbook to the enactments now in force in the Native States of India; and we consider that Mr. Macpherson deserves no small meed of praise for his untiring labour and perseverance.

Among periodicals we notice: *The University Law Review*, of New York; *The American Law Review*, of St. Louis, Mo.; *The Chicago Legal News*; *The Southern Law Review*, of Atalanta, Ga.; *The State Library Bulletin*, of Albany; *The Law Book News*, of St. Paul, Minn.; *The Toledo Legal News*, of Toledo, O.; *The National Corporation Reporter*, of Chicago; *The Virginia Law Journal*; *The Canadian Law Times*; *The Western Law Times*, of Canada; *India*, edited by Gordon Hewart, M.A.; *The Madras Law Journal*; *The Asiatic Quarterly Review*; *Il Filangieri*, by Dr. Leonardo Vallardi, of Milan; *The Times Law Reports*, London; *The Law Times*, London; *The Law Journal*, London.

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# Quarterly Digest.

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# Quarterly Digest

OF

## ALL REPORTED CASES,

IN THE

Law Reports, Law Journal Reports, Law Times  
Reports, and Weekly Reporter.

FOR FEBRUARY, MARCH, AND APRIL, 1895.

By C. H. LOMAX, M.A., of the Inner Temple,  
Barrister-at-Law.

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### Administration:—

- (i.) **Ch. D.**—*Account Duty—Power of Appointment—Successive Appointments.*—The donee of a power of appointment over a sum of consols made successive appointments by deed of specific amounts, subject to her life interest, and appointed the residue by will. *Held*, that the account duty, and the costs of administering the fund must be borne by the appointees rateably. — *Tucket v. Shaw*, L.R. [1895] 1 Ch. 843; 64 L.J. Ch. 288; 71 L.T. 873; 43 W.R. 316.
- (ii.) **C. A.**—*Insolvent Estate—Claim of Wife—Loan for Business Purposes—Judicature Act, 1875, s. 10—Married Women's Property Act, 1882, s. 8.*—Where a married woman has lent money to her husband for business purposes, her claim to repayment will be postponed to the claims of other creditors in the administration of his estate if insolvent. The rule applies if the estate is solvent at his death, but becomes insolvent if the costs of the administration action are taken into account. — *Tarn v. Emerson*, 43 W.R. 406.
- (iii.) **Ch. D.**—*Payment of Legacies—Realty and Personality.*—Where a testator bequeaths legacies and then devises and bequeaths the residue of his real and personal estate, the legacies are charged upon the real estate, but are payable primarily out of the personality, unless the testator directs that they are to be paid out of the mixed fund, in which case they are payable rateably out of both realty and personality. — *Knight v. Knight*, L.R. [1895] 1 Ch. 499; 64 L.J. Ch. 805.
- (iv.) **P. D.**—*Creditor.*—The Court declined to depart, on the ground of convenience, from the rule that a creditor, applying for a grant, must take a general grant. — *In the goods of Sheather*, 71 L.T. 848.

- (i.) **P. D.**—*Lunacy of Administrator—Grant for use of.*—Where a single administrator becomes insane, and a person is appointed under the Lunacy Act, 1890, s. 116, with only specified powers, the Court will make a grant to another of the next-of-kin for the use of such administrator during his lunacy, impounding the original grant.—*In the goods of Cooke*, L.R. [1895] P. 68; 64 L.J. P. 85; 72 L.T. 121.

### Adulteration:—

- (ii.) **Q. B. D.**—*Sample—Purchase for Analysis—Admission of Offence—Notification—Sale of Food and Drugs Act, 1875, ss. 13, 14—Margarine Act, 1887, ss. 6, 12*—It is a condition precedent to a prosecution under the Acts, that the inspector, after purchasing a sample, should notify the seller of his intention to have an analysis made, and that the analysis should be made, although the seller at the time admits an offence against the Acts.—*Smart & Son v. Watts*, L.R. [1895] 1 Q.B. 219; 64 L.J. McCl. 89; 71 L.T. 768; 43 W.R. 379.

### Banker:—

- (iii.) **Q. B. D.**—*Letter of Credit—Bills Drawn—Terms of Letter of Credit.*—The defendants addressed a letter of credit to K. and Co., undertaking to open a credit for £5,000 in favour of K. and Co., "to be availed of by drafts on us against produce bought and paid for by you, but not immediately ready for shipment." K. and Co. drew bills on the defendants without having bought produce, and negotiated them with the plaintiffs, who knew the terms of the letter of credit. The defendants declined to accept the bills. *Held*, that they were not liable, as no goods had been "bought and paid for" by K. and Co.—*Chartered Bank of India, Australia, and China v. Macfadyen*, 43 W.R. 397.

### Bankruptcy:—

- (iv.) **Q. B. D.**—*Act of—Absenting Himself.*—A judgment debtor, who previous to the judgment had been living in lodgings under an assumed name, removed after the judgment to other lodgings, leaving no address, and not communicating her address to her solicitor. *Held*, that she was "absenting" herself within the meaning of sect. 4, sub-sect. 1 (a), of the Bankruptcy Act, 1883.—*E. p. Jackson; in re Alderson*, L.R. [1895] 1 Q.B. 183; 64 L.J. Q.B. 188.
- (v.) **C. A.**—*Adjudication—Adjournment—Discretion.*—On an application under sect. 20 (c) of the Bankruptcy Act, 1883, to adjudicate a debtor bankrupt, the registrar has a discretion, for sufficient reason, to adjourn the application under sect. 105. *Seem*, that the fact that an immediate adjudication would result in injustice to the creditors is a "sufficient reason."—*E. p. Official Receiver; in re Lord Thurlow*, 48 W.R. 408.
- (vi.) **Q. B. D.**—*Administration of Deceased's Estate—Costs—Bankruptcy Act, 1883, s. 125.*—The words "testamentary expenses" in the section include the costs of the executrix in a creditor's action for administration, which are payable in full.—*E. p. Clark; in re Chapman*, 71 L.T. 778.
- (vii.) **C. A.**—*Annulment—Private Bargain by Creditor.*—Decision of Ch. D. (see Vol. 19, p. 114, vii.) reversed.—*McDermott v. Boyd*, 64 L.J. Ch. 18; 71 L.T. 602.
- (viii.) **C. A.**—*Bankruptcy Notice—"Final Judgment"—Bankruptcy Act, 1883, s. 4, sub-s. 1 (g).*—An order made by the Court of Bankruptcy on motion setting aside an assignment of certain of the bankrupt's property, and

directing the assignee to pay the costs of the motion, is not a "final judgment" so as to support a bankruptcy notice against the assignee on his non-payment of the costs.—*E. p. Official Receiver, L.R.* [1895] 1 Q.B. 609; 43 W.R. 305.

- (i.) **Q. B. D.**—*Bankruptcy Notice—Married Woman—Judgment Against—Bankruptcy Act, 1883, s. 4, sub-s. 1 (g)—Bankruptcy Rules, 1886, r. 130; Appendix, Form G.*—A judgment recovered against a married woman does not, upon the death of her husband, render her personally liable to pay the judgment debt, so as to entitle the judgment creditor to issue a bankruptcy notice to her upon such judgment. *E. p. Lercene; in re Hewett, L.R.* [1895] 1 Q.B. 328; 64 L.J. Q.B. 185; 72 L.T. 60; 43 W.R. 237.
- (ii.) **C. A.**—*Bankruptcy Notice—Judgment—"Final"—Bankruptcy Act, 1883, s. 4, sub-s. 1 (g).*—An interlocutory order was made for the payment of A.'s costs by X. A. brought an action for the taxed costs, and obtained judgment by default. *Held*, that it was a "final judgment" upon which a bankruptcy notice could be issued.—*E. p. McDermott; in re Boyd, L.R.* [1895] 1 Q.B. 611.
- (iii.) **C. A.**—*Notice—Irregularity—No Substantial Injustice.*—In an action by the petitioning creditor against the debtor and five others judgment was recovered against the debtor and three out of the five. In a bankruptcy notice the judgment was stated to have been recovered against all the defendants, their names being given. *Held*, that the notice was good, no substantial injustice being caused by the irregularity.—*E. p. Gibson; in re Low, 43 W.R. 405.*
- (iv.) **Q. B. D.**—*Bill of Lading—Indorsement—Act of Bankruptcy—Title of Trustee—Bankruptcy Act, 1883, ss. 43, 48 (g).*—Plaintiff consigned goods to E. under a bill of lading. E. indorsed the bill to G., his clerk, before obtaining possession of the goods, directing him to sell, and account to the plaintiff. He then assigned his goods for the benefit of creditors, and was subsequently adjudicated bankrupt. On an interpleader issue between the plaintiff and the trustee in bankruptcy the jury found that the property in the goods had passed to E., and that he indorsed the bill because he believed the goods to be the plaintiff's, and not from a desire to prefer him. *Held*, that the transaction was not fraudulent and void, but that the property did not pass to G. as agent for the plaintiff or otherwise, and that the goods were still part of E.'s estate at the time of executing the deed of assignment, and that the trustee was therefore entitled.—*Lauritzen v. Carr, 72 L.T. 56.*
- (v.) **C. A.**—*Hire Agreement—Assignment of.*—Decision of Q. B. D. (see Vol. 20, p. 33, vi.) affirmed.—*E. p. Isaacson; in re Mason, L.R.* [1895] 1 Q.B. 333; 43 W.R. 278.
- (vi.) **C. A.**—*Petitioning Creditor's Debt—Judgment obtained by Compromise—Fraud—Bankruptcy Act, 1883, s. 7.*—When a petitioning creditor's debt is founded upon a judgment obtained by the compromise of an action, the Court may reject the debt as not a good petitioning creditor's debt, if after enquiring into the transactions between the parties the Court can see that the compromise, though not fraudulent, was unfair and unreasonable.—*E. p. Troup; in re Hawkins, L.R.* [1895] 1 Q.B. 404; 72 L.T. 41; 43 W.R. 306.
- (vii.) **C. A.**—*Protected Transaction—Charging Order.*—A charging order against a fund in Court belonging to the bankrupt is not "an execution against the goods of a debtor" within sect. 45 of the Bankruptcy Act, 1883, nor a protected transaction within sect. 49.—*Courage v. O'Shea, L.R.* [1895] 1 Ch. 225; 64 L.J. Ch. 203; 71 L.T. 827; 43 L.R. 232.

(i.) **Q. B. D.**—*Secured Creditor—Valuation of Security.*—In sending in his proof a secured creditor need not state which particular securities he holds against which particular debts, nor separately assess the value of each security, but may value his securities in a lump sum against the total amount of his debt.—*In re Smith and Logan*; *see p. Fletcher v. Brandon*, 48 W.R. 413.

(ii.) **C. A.**—*Undue Preference—Suspension of Certificate—Bankruptcy Act, 1890, s. 8, sub s 8 (i)*—If a bankrupt within three months before the receiving order pays in full a creditor who would probably be entitled to preference in bankruptcy, the payment is an "undue preference," which makes suspension of his certificate necessary. *Seemle*, that the result would be the same even if the creditor would certainly be entitled to preference.—*E. p. Bryant*; *in re Bryant*, L.R. [1895] 1 Q.B. 420; 73 L.T. 183.

### Bill of Exchange:—

(iii.) **C. A.**—*Accommodation Bill—Fraudulent Alteration—Liability of Acceptor.*—Decision of Q. B. D. (*see Vol. 20, p. 8, iii.*) affirmed.—*Scholfield v. Lord Londesborough*, L.R. [1895] 1 Q.B. 596; 72 L.T. 46; 48 W.R. 331.

### Bill of Sale:—

(iv.) **Q. B. D.**—*Assignment for Creditors—Registration—Time Limit for Assent—Notice—Bills of Sale Act, 1878, s. 4.*—A deed of assignment is not prevented from falling within the exception in the section above mentioned, by reason only that a time limit is imposed within which creditors must assent in order to gain the benefit of the deed, so long as it provides for notice to them. Such a deed, therefore, does not require registration as a bill of sale.—*Hadley & Sons v. Beedom*, L.R. [1895] 1 Q.B. 646; 64 L.J. Q.B. 240; 48 W.R. 218.

### Building Society:—

(v.) **Ch. D.**—*Rule—Construction.*—*Held*, upon the construction of a rule of the defendant society, that notices of withdrawal which by the rule became effective on or before a certain date were entitled to priority over notices received after that date, there being nothing to negative the presumption that charges take effect in order of date.—*Botten v. City and Suburban Permanent Benefit Building Society*, 72 L.T. 87.

### Carrier:—

(vi.) **Q. B. D.**—*Wharfinger—Liability as Common Carriers.*—Wharfingers, who described themselves as wharfingers, lightermen, and carmen, carried goods from their wharf for their wharf customers, but not for strangers, except at arranged prices, and not then unless they considered the business good. *Held*, that they were not common carriers, or liable as such.—*Chattock v. Bellamy*, 64 L.J. Q.B. 250.

### Charity:—

(vii.) **Ch. D.**—*Administration—Scholarship—Action to Obtain—Charity Commissioners—Consent of.*—The foundation deed of a scholarship provided for the award thereof to the qualified candidate who should pass the best examination in certain subjects. The plaintiff alleged that he had obtained the highest marks at the examination, but that the scholarship had not been awarded, and he claimed possession. *Held*, that by presenting himself for examination the plaintiff did nothing which constituted a contract with the trustees, that his claim

involved a partial administration of the trusts, and that the certificate of the Charity Commissioners was necessary for the continuance of the action.—*Rooke v. Dawson*, L.R. [1895] 1 Ch. 480; 64 L.J. Ch. 301; 72 L.T. 248; 43 W.R. 313.

- (i.) **Ch. D.—Endowment—Charity Commissioners.**—Where funds were bequeathed to trustees upon trust to apply and appropriate the same as they in their uncontrolled discretion should think proper for the advancement of education and learning; *held*, that the charity was subject to the general jurisdiction of the Charity Commissioners, and that the trustees must furnish accounts to them.—*In re Gilchrist's Trusts*, L.R. [1895] 1 Ch. 367; 64 L.J. Ch. 298; 71 L.T. 875; 43 W.R. 234.
- (ii.) **Ch. D.—Legacy to Charity Charged on Real Estate in Aid of Personality—Abatement.**—A testator bequeathed to a charity an annuity fund which was made up primarily of personality, and was only charged on real estate in aid of the personality. *Held*, that the gift to the charity must abate only in the proportion which the value of the impure personality bore to that of the pure personality, and also to the extent to which it was necessary to resort to the proceeds of sale of the real estate in aid of the personality for payment of the gift.—*Knight v. Knight*, 72 L.T. 221.
- (iii.) **P. C.—Mortmain—Law of Victoria.**—A testator, domiciled in Victoria, bequeathed money to an English corporation for the purchase of land in England for charitable purposes. The gift was valid by the law of the colony. *Held*, that the law of the colony governed the case, and that the gift was good.—*Mayor, &c., of Canterbury v. Wyburn*, L.R. [1895] A.C. 89.

### Colonial Law :—

- (iv.) **P. C.—Canada—Arbitration—Appeal—Duty of Court.**—The Canadian Railway Act, 1868, s. 161, sub-s. 2, provides for an appeal to the Court from the award of arbitrators in respect of land taken, and the section directs that the Court shall decide the appeal, if it is a question of fact, upon the evidence taken before the arbitrators, "as in a case of original jurisdiction." *Held*, that the Court was intended to examine both facts and law, and decide as to the justice of the award upon the merits; not that they should entirely disregard the award and the reasoning in support of it.—*Atlantic and North-Western Railway Co. v. Wood*, 72 L.T. 238.
- (v.) **P. C.—Manitoba—Schools.**—Sect. 22 of the Manitoba Act, 1870, is intended to be a substitute for sect. 93 of the British North America Act, 1867, so far as regards Manitoba. Sub-sect. 2 of sect. 22 of the first-mentioned Act extends to the rights of the minority in relation to education acquired by legislation in the province after union with Canada, but does not give the parties aggrieved an appeal to the Governor-General in Council concurrently with the right to resort to the courts of law. An appeal lies to the Governor-General in Council under the sub-section on the ground that the Public Schools Act of 1890 prejudicially affected the rights of the Roman Catholic minority in relation to education by substituting a system of undenominational schools supported out of public moneys for the previously existing denominational schools.—*Brophy v. Attorney-General of Manitoba*, 72 L.T. 163.
- (vi.) **P. C.—New South Wales—Arbitration—Company.**—The arbitration provisions in the Companies Act only apply to voluntary arbitrations to which a company has agreed in writing under seal. Accordingly, an arbitrator under the Arbitration Act, 1892, need not make the declaration required by sect. 113 of the Companies Act.—*Zelma Gold Mining Co. v. Hopkins*, L.R. [1895] A.C. 100; 72 L.T. 82.



- (i.) **P. C.**—*Natal—Speculative Transactions in Shares.*—An association formed for the purpose of speculating in shares, of which the appellant was a member, had dealings with other such associations of which he was not a member, though some of his associates were. *Held*, that such dealings were not necessarily outside the authority of the manager, which authority was not limited to transactions in the open market.—*Lanighton v. Griffin*, L.R. [1895] A.C. 104.
- (ii.) **P. C.**—*Victoria—Land Tax—Purchase—Apportionment.*—The respondent had contracted to purchase from the appellant less than the 640 acres, which is the minimum quantity of land liable to land tax. *Held*, that the appellant was not entitled on completion to charge the respondent with the land tax on the land purchased, either as his proportionate part of the tax paid on the entire holding, or as an outgoing contracted to be paid for in respect of his purchase.—*County Estates Co. v. Graves*, L.R. [1895] A.C. 118; 72 L.T. 80.
- Company:—**
- (iii.) **P. C.**—*Charge upon Uncalled-up Capital.*—A company limited by share, under the Companies Act, 1874, of New South Wales, has power to charge uncalled-up capital, unless such a charge is forbidden by the memorandum or articles. A company was formed (*inter alia*) to receive money "upon the security of any property of the company." *Held*, that these words authorised a charge upon uncalled-up capital. The articles gave power to the directors to call up only a certain portion of the capital without a special resolution. Before the limit was reached debentures were issued purporting to charge the uncalled-up capital. *Held*, that the whole uncalled capital was charged, and not only that which the directors could call up. *Newton v. Debenture-Holders of the Anglo-Australian Finance and Land Co.*, 43 W.R. 400.
- (iv.) **Ch. D.**—*Reduction of Capital—Cancellation of Shares.*—The capital of a company consisted of first and second preference, and ordinary shares. The preference shares had non-cumulative preferential rights to dividends, and absolute preferential rights as to capital. A large amount of capital having been lost, it was proposed to reduce the capital by cancelling the ordinary and second preference shares. It was proved that it was highly improbable that any dividends could ever be earned for the second preference and ordinary shares. A second preference shareholder opposed the scheme. *Held*, that it ought to be sanctioned.—*In re Floating Dock Co. of St. Thomas*, 48 W.R. 844.
- (v.) **Ch. D.**—*Unregistered Building Society—Winding-up and Vesting Order—Sale by Liquidator.* The Court has no jurisdiction, under the Companies Act, 1862, s. 199, to make an order to wind up a building society, not registered under the Building Societies Act, 1874, where the society does not consist of seven members, and any such order is void. A liquidator appointed under such an order cannot make a good title to property of the society.—*In re Bowling & Welby's Contract*, 72 L.T. 18; 48 W.R. 216.
- (vi.) **C. A.**—*Winding-up—Costs—Liquidator's Liability.*—An application by certain persons to be struck off the list of contributories was opposed by the liquidator, and was refused with costs; but an appeal against such refusal was allowed with costs above and below. *Held*, that the liquidator was not personally responsible for the costs.—*In re R. Bolton & Co.*, L.R. [1895] 1 Ch. 333; 64 L.J. Ch. 285; 72 L.T. 171.
- (vii.) **Ch. D.**—*Winding-up—Misfeasance—Profits—Auditors—Duties.*—Profits, in the case of a trading or banking company, are the excess of gains over expenses, as shown by the revenue, as distinguished from

the capital, account. They need not necessarily be in hand. \*The directors are not paying dividends out of capital if they treat a debt as profit earned, though not received, in the revenue account, though the debt turns out bad. Where auditors report and certify balance-sheets showing profits, when properly prepared balance-sheets would not have shown profits, or if they fail to report that advances have been made without proper security, they are liable for misfeasance in respect of dividends paid upon the basis of such balance-sheets and reports. The auditors should take care that the balance-sheet is drawn in such a form that the shareholders have the necessary information to judge of the propriety of the dividend recommended.—*In re London and General Bank*, 72 L.T. 227.

- (i.) **Ch. D.—Winding-up—Private Company—Debts of—Principal and Agent—Indemnity.**—Where the owner of a business has, to enable himself to trade without risk, converted his business into a limited "private" company, the only shareholders being his nominees, the Court will regard such company as the agent of the founder in respect of the debts contracted by it under his direction, and will cause him to indemnify the company against the same in the event of a winding-up.—*Broderip v. A. Salomon & Co.*, 72 L.T. 261.
- (ii.) **Ch. D.—Winding-up—Public Examination—Companies (Winding-up) Act, 1890, s. 8.**—Where the Court has jurisdiction to make, and has made, an order for a public examination, the order will not be discharged on the ground that fraud is not sufficiently shewn by the Official Receiver's report on which the order is based. And where such report is made in good faith, the Court will not allow evidence to be adduced to rebut the charge of fraud thereby made; and will not take the report off the file, or remit it to the Official Receiver in order that other facts, relied on by the person to be examined, may be stated therein.—*In re New Travellers' Chambers*, L.R. [1895] 1 Ch. 395; 64 L.J. Ch. 317; 72 L.T. 89; 43 W.R. 282.
- (iii.) **Ch. D.—Winding-up—Rent—Right of Landlord.**—Under an agreement in 1892, A. let to a limited company a shop for three years at a yearly rent, payable quarterly, "two quarters' rent to be always due and payable in advance if required." The company went into voluntary liquidation on December 20th, 1894, but the liquidator remained in possession for the purposes of the winding-up. A. demanded payment of the rent due on December 25th, and of the next two quarters in advance. *Held*, that the rent must be apportioned; that A. was entitled to be paid in full the rent from December 20th, for so much of the next two quarters as the liquidator was in possession for the purposes of the winding-up, but that A. was only entitled to prove for the rent up to December 20th, and for the remainder of the next two quarters.—*Shackell and Co. v. Chorlton and Sons*, L.R. [1895] 1 Ch. 378; 72 L.T. 188; 43 W.R. 394.
- (iv.) **C. A.—Winding-up—Supervision Order—Petitioner's Debt.**—Decision of Ch. D. (see Vol. 20, p. 38, i) affirmed.—*In re Bank of South Australia*, 72 L.T. 273; 43 W.R. 359.
- (v.) **C. A.—Winding-up—Shares Issued at a Discount.**—The articles of a company provided that in case of a winding-up, the surplus assets should be distributed so that the losses should be borne by the members in proportion to the capital paid up, or which ought to have been paid up, on the shares held by them respectively at the commencement of the winding-up. "But this clause is to be without prejudice to the rights of the holders of shares issued upon special conditions." *Held*, that notwithstanding the above proviso, the holders of shares issued at a discount must, for the purpose of

adjusting the rights of contributories, *inter se*, pay up their shares in full.—*In re Railway Time Table Publishing Co., L.R. [1895] 1 Ch. 255*  
64 L.J. Ch. 177.

### Copyright:—

- (i.) **Ch. D.—Dramatic Work—Representation—English Proprietor—Foreign Country—Infringement—Dramatic Copyright Act, 1883, s. 1—Berne Convention Acts, 2, 3.**—The Court cannot, at the instance of the English proprietor of the performing right of a drama by an English author, restrain a threatened infringement by a British subject in any foreign country comprised in the International Copyright Union. The English proprietor enjoys in any country of the Union the rights which the law of that country gives to natives thereof, and can, therefore, take proceedings in the Courts of that country.—*"Morocco Band" Syndicate v. Harris, L.R. [1895] 1 Ch. 584; 43 W.R. 393.*
- (ii.) **H. L.—Infringement—Picture—Copy of Reproduction.**—Decision of C. A. (see Vol. 20, p. 7, vi.) affirmed.—*Hansstaengl v. Baines, L.R. [1895] A.C. 20; 64 L.J. Ch. 81; 72 L.T. 1.*
- (iii.) **C. A.—International—Registration—Foreign Picture—First Produced—International Copyright Act, 1886, ss. 2 (3), 11.**—The plaintiff need not register his copyright in this country in order to maintain an action for infringement of his copyright in a foreign picture. A picture is "first produced" in the country where it is first published.—*Hansstaengl v. American Tobacco Co., L.R. [1895] 1 Q.B. 347; 71 L.T. 864; 43 W.R. 261.*
- (iv.) **Ch. D.—Registration—Coloured Supplement to Periodical—Literary Copyright Act, 1842—Fine Arts Copyright Act, 1862.**—Where a coloured supplement is issued, but not physically connected, with a periodical, registration of the periodical under the Act of 1842 will protect the supplement, though not registered under the Act of 1862, if there is clear evidence that the supplement is a part of the periodical.—*Comyns v. Hyde, 72 L.T. 250; 43 W.R. 266.*
- (v.) **Ch. D.—Sale of Blocks for Personal Use—Unassignable Licence—Verbal Copyright Act, 1842, s. 15.**—The plaintiffs were registered owners of books containing illustrations of carriages, and they supplied copies of the illustrations to customers for advertising purposes. They sold to L. electro blocks of the drawings to enable him to print the illustrations himself. There was no written agreement or licence. L. allowed the defendants to use the blocks. *Held*, that the licence to L. was unassignable, and that the defendants could be restrained. *Seemle*, that L. could not have been restrained from using the blocks, though he had no written licence.—*Cooper v. Stephens, L.R. [1895] 1 Ch. 567*

### County Court:—

- (vi.) **P. D.—Appeal—Admiralty Action—Amendment—County Courts—Admiralty Jurisdiction Act, 1868, ss. 26, 31—County Courts Act, 1888, ss. 87, 120.**—There is a right of appeal by leave from a county court in an interlocutory matter, although the amount is under £50. A county court judge may amend a claim in an action of collision, after the question of liability has been decided, and before reference.—*The Alert, 72 L.T. 124.*
- (vii.) **Q. B. D.—Jurisdiction—Stay of Execution—County Courts Act, 1888, ss. 105, 153.**—A county court judge has no jurisdiction to grant a stay of execution for more than fourteen days after the date of the judgment in cases of judgments for over £20, merely on the ground of inability to pay the debt.—*Attenborough v. Henschel, 64 L.J. Q.B. 255; 72 L.T. 192; 43 W.R. 283.*

**Covenant:—**

- (i.) **C. A.**—*Separation Deed between Persons not Married—Resumption of Cohabitation.*—A. and R. had cohabited as man and wife. They agreed to separate, and A. covenanted to pay R. an annuity for life. They afterwards cohabited again till A.'s death. *Held*, that the covenant to pay the annuity was indefeasible, and that R. could claim the annuity against A.'s estate.—*Rabbeth v. Donaldson*, L.R. [1895] 1 Ch. 455; 72 L.T. 178; 48 W.R. 824.

**Criminal Law:—**

- (ii.) **Q. B. D.**—*Brothel-Keeping—Criminal Law Amendment Act, 1885, s. 18, sub-s. 1.*—A woman occupied a house to which men resorted to commit fornication with her. No other woman lived in this house, or went there for purposes of prostitution. *Held*, that she had not committed the offence of "keeping a brothel."—*Singleton v. Ellison*, L.R. [1895] 1 Q.B. 607; 72 L.T. 236.
- (iii.) **C. C. R.**—*Demand of Money—"Menaces"—Larceny Act, 1861, s. 44.*—The word "menaces" in the section above mentioned, is not limited to threats of violence or injury to person or property, but includes threats of accusations of misconduct not amounting to crime. It is a question for the jury whether the threats used are such as would reasonably operate to coerce an ordinary person.—*Reg. v. Tomlinson*, 64 L.J. M.C. 97 72 L.T. 155.

**Crown:—**

- (iv.) **P. C.**—*Action of Ejectment by—Defence—Specific Performance.*—In an action of ejectment by the Crown any equitable defence may be set up which would have availed against a private plaintiff. Judgment held to have been rightly entered for the defendant, when a concluded contract with the Crown was proved entitling him to the issue of a grant in respect of the land in question.—*Attorney-General for Trinidad, v. Bourne*, L.R. [1895] A.C. 83.

**Crown Servants:—**

- (v.) **P. C.**—*Colonial Government—Tenure of Office—Appeal by Special Leave—Costs.*—Servants of the Crown hold their offices at pleasure, and are not entitled to a legal remedy for unjust dismissal. Servants of a Colonial Government are in the same position. The Colonial Office "Regulations" do not form part of their contract of service. Where the sum in dispute is below the appealable amount, but special leave to appeal is given on account of the importance of the question in dispute, the appellant will be put under an obligation to pay the costs in any event.—*Shenton v. Smith*, 72 L.T. 180.

**Deed:—**

- (vi.) **C. A.**—*Construction—General Words—Ejusdem Generis.*—A husband executed a post-nuptial settlement of a house and stables, and assigned to the trustees alhousehold furniture, &c., "and other goods, chattels, and effects, in or upon, or belonging to" the premises. After his death the wife claimed the horses, carriages, and harness. *Held*, that the general words covered these articles, and were not to be restricted to things *ejusdem generis*.—*Anderson v. Anderson*, 43 W.R. 322.

**Ecclesiastical Law:—**

- (vii.) **C. A.**—*Church Rates—Compulsory—Abolition—Private or Local Act—Burial Fees—Compulsory Church Rates Abolition Act, 1868, s. 5—Burial*

*Act, 1852, s. 86.*—The "contract" or "consideration" alluded to in the first-mentioned section must appear in or from the construction of the private or local Act which authorises the levying of a church rate. The vestrymen were authorised by a private Act to build a new parish church and provide a cemetery, and receive fees for burial, and apply them, among other purposes, to the repair of the church. *Held*, that the burial fees payable to the vestrymen under the private Act were payable in the burial ground provided by the burial board of the parish, and were payable by the burial board to the vestrymen for the purpose of repairing the parish church.—*Reg. v. Vestry of Marylebone*, 72 L.T. 11.

- (i.) **Ch. D.—Glebe—Mines**—18 *Eliz.*, c. 10 & 20; 14 *Eliz.*, c. 11 & 14; 5 & 6 *Vict.*, c. 108, ss. 6, 20; 21 & 22 *Vict.*, c. 57, ss. 1, 2, 10.—An incumbent cannot lawfully work, or authorise a tenant to work, mines in the glebe which have been illegally opened. The Ecclesiastical Commissioners can maintain an action to restrain the working of mines in glebe land otherwise than by a lease sanctioned by themselves. A rector illegally opened mines in his glebe in 1850. In 1885 his successor agreed, subject to the consent of the Commissioners being obtained, to lease the mines at royalties which for some years were received by him and paid to the Commissioners, who repeatedly pointed out that a lease with their consent ought to be applied for. In 1894 the tenant applied for a lease which was refused, *bona fide*, and for adequate reasons. *Held*, that the Commissioners were entitled to restrain the further working of the mines.—*Ecclesiastical Commissioners v. Wodehouse*, L.R. [1895] 1 Ch. 552; 72 L.T. 257; 43 W.R. 394.

- (ii.) **Consistory Court of Norwich.—Faculty—Rood Loft—Figures—Screen—Gates.**—A faculty was refused for a rood loft over a chancel screen, and for figures on a beam above the loft. A faculty was granted for a chancel screen with gates, for screens across the aisles with gates, and for choir-stalls, evidence being given that the property in the chancel and aisles required protection.—*Vicar of St. John the Baptist, Timberhill v. Rectors and Parishioners*, L.R. [1895] P. 71.

### Estoppel:—

- (iii.) **C. A.—Attornment—Bailee—Warehouseman—Trover—Measure of Damages.**—The owner of goods at a warehouse was induced by the fraud of F. to transfer them to his order. F. then sold them to an innocent purchaser, who before paying for them obtained a statement from the warehouseman that he held them to the order of F. On discovery of the fraud delivery of the goods was refused. *Held*, that the warehouseman, having attorned to the purchaser, was estopped from impeaching his title, that the refusal to deliver was a conversion, and that the measure of damages was the market value of the goods at the date of the refusal.—*Henderson & Co. v. Williams*, L.R. [1895] 1 Q.B. 521; 72 L.T. 98; 43 W.R. 274.

### Evidence:—

- (iv.) **Q. B.—Admission—Separable Statements.**—It was sought to charge W. as a member of a firm to which goods had been supplied. The only evidence of his having been a member at any time was a letter written by him to a third person prior to the supply of the goods, in which he stated that he had ceased to be a partner some time previously. *Held*, that there was evidence to go to the jury that he was a member at the time the goods were supplied.—*Brown v. Wren Brothers*, L.R. [1895] 1 Q.B. 390; 64 L.J. Q.B. 119; 72 L.T. 109; 43 W.R. 351.

**Fishery:—**

- (i.) **Q. B. D.**—*Definition of District—Tributary.*—A fishery district was defined as including "the river S. and all its tributaries." A brook ran into the C., which ran into the V., which ran into the S. *Held*, that the brook was a tributary of the S.—*Kvans v. Owen*, L.R. [1895] 1 Q.B. 237; 64 L.J. M.C. 59; 72 L.T. 54; 43 W.R. 237.

**Friendly Society:—**

- (ii.) **Ch. D.**—*Trusts Exhausted—Surplus Funds—Resulting Trust.*—A society was formed to provide annuities for the widows of its ordinary members. The annuity fund was formed by subscriptions of both ordinary and honorary members, but the honorary members did not share in the benefits. *Held*, that it was not a charity. The members and annuitants were all dead and there was a balance of the annuity fund unexpended. *Held*, that there was a resulting trust for the ordinary members from time to time or their representatives, and that the difficulty and expense of finding the parties entitled did not entitle the Crown to claim the fund as *bona vacantia*.—*Cunnack v. Edwards*, L.R. [1895] 1 Ch. 489; 43 W.R. 325.

**Gaming:—**

- (iii.) **Q. B. D.**—*Stakeholder—Revocation of Authority—Gaming Act, 1892, s. 1.*—The plaintiff and H. each deposited £5 with the defendant, to be paid to the winner of a race between them. H. won, and the plaintiff revoked his authority. The money was paid to H. *Held*, that the £5 was not a "sum of money paid" by the plaintiff within the meaning of the Act, and that the plaintiff was entitled to recover. *O'Sullivan v. Thomas*, 72 L.T. 285; 43 W.R. 269.
- (iv.) **Q. B. D.**—*Using Place for Betting—Evidence.*—On the trial of an indictment charging the defendant with using the bar of a public-house for the purpose of betting with persons resorting thereto, it was proved that he habitually went to the house, and that a number of persons resorted thereto, and having written the names of horses upon slips of paper and wrapped up money therein, went outside with the defendant, and handed him the packets. *Held*, that there was evidence for the jury upon the charge.—*Reg. v. Worton*, L.R. [1895] 1 Q.B. 214; 64 L.J. M.C. 74; 72 L.T. 29.
- (v.) **Q. B. D.**—*Delivery or Transfer—Sale—Pledge—Factors Act, 1899, s. 9.*—A person in possession of a gas engine under a hiring agreement, assigned all his stock, machinery, &c., to a trustee for creditors. The trustee took possession of the gas engine. *Held*, that it did not pass to him by the assignment, and that there was no "transfer" or "delivery."—*Kitto v. Bilbie, Hobson, & Co.*, 72 L.T. 266.

**Highway:—**

- (vi.) **Q. B. D.**—*Extraordinary Expenses—Surveyor's Certificate—Highways, &c., Amendment Act, 1878, s. 23.*—A surveyor's certificate may include more highways than one. Therefore where a certificate was given relating to several highways, and a second was given relating to one of them only, including expenses incurred both before and after the first certificate, *held*, that the first certificate was good, and that proceedings to recover the expenses named therein ought to be commenced within six months from its date.—*Wirral Highway Board v. Newell*, 43 W.R. 328.
- (vii.) **C. A.**—*Extraordinary Traffic—Highways, &c., Act, 1878, s. 23.*—X. contracted to deliver ballast for a railway, and agreed with owners of

traction engines for the haulage thereof from his wharf. X exercised no control over the user of the engines, the weights carried, or the routes followed. The traffic so caused was extraordinary, and the road was damaged. *Held*, that X was the person by whose order such traffic had been conducted, and was liable for the expenses of repairing the damage.—*Kent County Council v. Vidler*, L.R. [1895] 1 Q.B. 448; 64 L.J. M.C. 177; 72 L.T. 77; 43 W.R. 273.

- (i.) **Q. B. D.—Horse Left Unattended—Penalty—Highway Act, 1835, s. 78.**—Where a person in charge of any carriage passing upon a highway, negligently or wilfully leaves it so that he ceases to have the direction of the horses drawing the same, he is liable, upon conviction, to a fine not exceeding £5; and the fact that the carriage was standing still during his absence, and did not in fact cause any obstruction, is no defence.—*Phythian v. Bazendale*, 43 W.R. 412.
- (ii.) **Q. B. D.—Subsidence—Railway—Obstruction.**—A railway was constructed which crossed an existing highway on the level. The road subsided through the working of the defendants, but its surface was not injured. The railway company banked up their line to maintain its level, and thereby made the road impassable. *Held*, that the obstruction was not caused by the defendants, but by the railway company.—*A. G. v. Conduit Colliery Co.*, L.R. [1895] 1 Q.B. 301; 64 L.J. Q.B. 207; 71 L.T. 771; 43 W.R. 366.

### Husband and Wife:—

- (iii.) **P. D.—Divorce—Cruelty—Deed of Separation.**—Petition by a wife for divorce on the ground of cruelty and adultery, the only acts of physical cruelty having been long condoned. *Held*, that wilfully depriving her of her proper position in the household, neglecting her, degrading her to the level of a servant, and compelling her to do menial work, were acts of cruelty which would support the petition; and that the fact that the parties had lived apart under a deed of separation was no bar.—*Aubourg v. Aubourg*, 72 L.T. 295.
- (iv.) **P. D.—Divorce—Collusion.**—Collusion between the parties is a sufficient ground for rescinding the decree, even if the facts relating to the collusive arrangement are before the Court at the hearing. Where the petitioner has indisputable ground for divorce, and his collusive arrangement with his adulterous wife was for the benefit of their child, the decree will still be rescinded on the intervention of the Queen's Proctor.—*Churchward v. Churchward*, L.R. [1895] P. 7; 64 L.J. P. 18; 71 L.T. 782; 43 W.R. 380.
- (v.) **P. D.—Divorce—Custody of Child.**—Upon summons by the father as to the custody *pendente lite*, of the eldest child, a girl over sixteen years of age, the Judge directed that she should remain in the custody of the mother.—*B. v. B.*, 72 L.T. 268.
- (vi.) **P. D.—Divorce—Variation of Settlement.**—A settlement made by the petitioner on his marriage limited property after his death to his sons the issue of the marriage, then to sons of any subsequent marriage, then to the petitioner's brother and his sons, then to the petitioner's daughters, with ultimate remainder to the petitioner. There was no issue of the marriage, and the brother had died without issue. The marriage was dissolved. *Held*, that an order might be made for the re-conveyance of the property to the petitioner for his own use.—*Meredyth v. Meredith*, L.R. [1895] P. 92; 43 W.R. 304.
- (vii.) **P. D.—Nullity of Marriage—Duress.**—A man after paying attentions to a girl of sixteen, threatened to blow out her brains with a pistol, which he produced, unless she consented to marry him, which she did.

Shortly after he met her and took her to a registry office, saying that they were going to see his mother. During the marriage ceremony she fainted, and afterwards got away. He never asserted any marital rights. The Court pronounced the marriage null and void.—*Bartlett v. Rice*, 72 L.T. 122.

**Incumbrance :—**

- (i.) **Ch. D.—Priority—Fund in Court—Stop Order.**—A fund in Court is in the custody of the Court for the purposes of the suit, and not for any other purpose, such as the receipt of notice of an incumbrance on the contingent reversionary interest of a beneficiary under the will to administer which the suit is instituted. An earlier incumbrancer, who had alone given notice to the legal personal representative of such beneficiary, *held*, to have priority over a later incumbrancer whose stop order was obtained before that of the first incumbrancer, there being no evidence of assent by the legal personal representative to the bequest of residuary estate contained in his will, and no application by such personal representative for payment out of the share of the beneficiary.—*Stevens v. Green; Green v. Knight*, 72 L.T. 88.

**Insurance :—**

- (ii.) **C. A.—Life—Proposal—Statements—Warranty—Condition Precedent.**—In his proposal to an insurance company the assured had made certain statements as to his health and previous applications for insurance, and had agreed that these statements were by him "warranted to be true, and were offered to the company as a consideration of the contract." A policy was issued which made the application part of the contract. The statements in the proposal were not true. *Held*, that their truth was a condition precedent, and that the company was not liable on the policy.—*Hambrough v. The Mutual Life Insurance Co. of New York*, 72 L.T. 140.

**Justices :—**

- (iii.) **Q. B. D.—Committal Warrant—Wrongful Arrest—Damages.**—The plaintiff was arrested under a committal warrant signed and issued by the defendant, a justice of the peace, for non-payment of a debt made up of a sum alleged to be due from him to the local sanitary authority under an order of quarter sessions, and of the costs awarded. *Held*, that the committal warrant was bad, and that the plaintiff was entitled to recover from the defendant, as special damages, the amount paid by him to obtain his release.—*Norton v. Monckton*, 43 W.R. 350.
- (iv.) **Q. B. D.—Disqualification—Bias.**—An unqualified pilot was convicted by the justices of continuing in charge of a ship after a qualified pilot had offered to take charge of her. M., one of the justices, was a qualified pilot, but was in the exclusive employment of one firm, and did not compete with the other pilots. *Held*, that M. had an interest in the conviction, and that it must be quashed.—*Reg. v. Huggins*, L.R. [1895] 1 Q.B. 568; 72 L.T. 193; 43 W.R. 329.

**Landlord and Tenant :—**

- (v.) **Q. B. D.—Agricultural Holdings Act, 1883, ss. 11, 20—Award—Arbitrators—Appointment of.**—In a reference under the Act for compensation for improvements, the registrar of the county court has no jurisdiction to appoint a referee for one of the parties without his actual consent. Failing such consent the power to appoint a referee for one party upon the application of the other is exercisable by the Judge only, and an award stating that one of the referees was appointed



- by the registrar without stating that the consent of the parties was given, is bad on the face of it. In a reference under the Act the referees have no jurisdiction to order a party to pay costs as between solicitor and client.—*In re Griffiths and Morris*, 72 L.T. 290.
- (i.) **C. A.**—*Notice of Determination of Lease*.—Decision of Q. B. D. (see Vol. 20, p. 43, vi.) affirmed.—*Bury v. Thompson*, 72 L.T. 187 48 W.R. 888.
- (ii.) **C. A.**—*Yearly Tenancy—Commencement of—Notice to Quit*.—H. became yearly tenant of S. under an agreement dated the 19th of May, 1890, such yearly tenancy "commencing on the 19th day of May instant." The rent was to be paid on the usual quarter days. *Held*, that the tenancy commenced on the 19th of May, and that a notice to quit "on the 19th of May next" given on the 17th of November was a good notice. *Held*, that a notice to quit on the 18th of May would have been equally good, the tenancy determining at midnight on the 18th.—*Sidbotham v. Holland*, L.R. [1895] 1 Q.B. 878; 64 L.J. Q.B. 200; 72 L.T. 62; 48 W.R. 224.
- (iii.) **Q. B. D.**—*Notice to Quit—Sufficiency*.—On January 11th, 1892, a tenant wrote saying that he wished to terminate his tenancy, and asking when his tenancy would expire. The reply was that notice must be given to terminate on the 1st of July in any year, and that "you therefore hold the rooms till July, 1893." *Held*, that a good notice had been given and accepted, and that the tenancy terminated on the date mentioned.—*General Assurance Co. v. Worsley*, 62 L.J. Q.B. 253.
- (iv.) **Q. B. D.**—*Distress*.—8 Anne, c. 14, ss. 6, 7—The right to distress after the expiration of a tenancy does not apply when the tenant remains in possession of part of the premises under a new tenancy created by agreement.—*Wilkinson v. Peck*, L.R. [1895] 1 Q.B. 516; 64 L.J. Q.B. 178; 72 L.T. 151; 48 W.R. 802.
- (v.) **Q. B. D.**—*Encroachment of Tenant—Effect of—Limitations*.—A tenant under a lease for years encroached upon and occupied for more than twelve years a strip of land adjoining his holding. *Held*, that the landlord could not eject him, but that he must be deemed to have occupied it as part of his holding, and was entitled to occupy it for the rest of the term.—*Taber v. Godfrey*, 64 L.J. Q.B. 245.

#### Libel:—

- (vi.) **H. L.**—*Trade—Retail Traders—Advertisement*.—Decision of C. A. (see Vol. 19, p. 127, v.) reversed.—*White v. Mellin*, 64 L.J. Ch. 308; 43 W.R. 353.

#### Licensing:—

- (vii.) **C. A. & Q. B. D.**—*Appeal—Quarter Sessions—Costs*.—A licensing appeal having been heard and determined at quarter sessions, the justices refused to make an order under 9 Geo. 4, c. 61, s. 29, that the unsuccessful appellant should pay the costs. The question of costs had been fully argued. *Held*, that as they had judicially decided the question, a mandamus to hear and determine the question of costs ought not to be issued.—*Reg. v. London Justices*, L.R. [1895] 1 Q.B. 616; 64 L.J. M.C. 100; 72 L.T. 211; 48 W.R. 287.
- (viii.) **Q. B. D.**—*Enlargement of Premises—"New Premises"—Discretion of Justices*.—A. held a licence for a boerhouse existing before 1869. He enlarged his house, so that the new bar stood on the site of a strip of garden. The justices convicted him of selling on unlicensed premises. *Held*, that the conviction was wrong. He applied for a renewal of his licence, which was refused. *Held*, that it was not open to the justices

to treat the premises as other than the old premises improved, and that they could not refuse a renewal of the licence.—*Deer v. Bell*, 64 L.J. M.C. 85; 48 W.R. 286.

- (i.) **Q. B. D.**—*Refreshment House in Wales—Hours of Closing.*—The hours at which refreshment houses in Wales must be closed are regulated by the Licensing Act, 1874, and not by the Sunday Closing Act, 1881, s. 1.—*Berni v. Thorney*, 43 W.R. 411.

### Limitations :—

- (ii.) **Ch. D.**—*Mortgage—Priorities.*—A. mortgaged premises to a building society, and afterwards in 1874 gave a mortgage in the form of a first mortgage to P., to secure a sum lent out of funds held by P. as trustee for A.'s wife and children. A. afterwards gave an equitable mortgage to a bank. The building society's mortgage was paid off, and the mortgage deed returned to A. with the statutory receipt. X. paid off the bank, and received from them the title deeds, and from A. a deed purporting to be a first mortgage. P. died, and his executor conveyed the property under his mortgage to the *cestui que trust*, but it appeared from the recitals that no principal and interest had been paid thereunder, and it was shown that the mortgagee's title had never been acknowledged. A. was in possession throughout. *Held*, that as the mortgagor had been in possession, P., or those claiming under him, could at any time have brought a foreclosure action, notwithstanding the prior legal mortgage, and that such action would have been an action to recover land. *Held*, therefore, that the statutory period having elapsed, the mortgagee's title was extinguished, and could not be revived, and that upon such extinguishment the legal estate vested in the mortgagor and passed from him to the plaintiff.—*Kibble v. Fairthorne*, L.R. [1895] 1 Ch. 219; 64 L.J. Ch. 184; 71 L.T. 755; 43 W.R. 327.

### Local Government :—

- (iii.) **Q. B. D.**—*"Aided Police Force"—County Council Contributions—Police Act, 1890, s. 25—Local Government Act, 1888, s. 24 (j).* Where for any special emergency constables from another police force are added to a local police force, they are deemed to be a part of such force for the purposes of their pay; and the county council must contribute half of such pay.—*Reg. v. West Riding County Council*, 64 L.J. M.C. 95; 43 W.R. 386.
- (iv.) **C. A.**—*New Street - Construction of.*—The defendant owned a strip of land on one side of a lane in an urban district. The land led from a high road and ended in a *cul-de-sac*, and on the other side were houses which had been built many years. The defendant built three houses on his land facing the high road, and having access solely therefrom. The side wall of one of the houses abutted on the lane, and the garden wall extended 80 feet down the lane. *Held*, that this did not constitute the lane a new street so as to be subject to the bye-laws of the sanitary authority under the Public Health Act, 1875, sect. 157.—*St. George's Local Board v. Ballard*, 43 W.R. 409.
- (v.) **Q. B. D.**—*Private Street Works—Apportionment of Expenses.*—Where proposed works under the Private Street Works Act, 1892, consist of a roadway in a new street, and a footpath on one side, there being no houses on the other side, the whole of the expenses are to be apportioned, under sect. 10, amongst the owners of premises abutting on both sides of the street.—*Great Clacton Local Board v. Young & Sons*, L.R. [1895] 1 Q.B. 395; 71 L.T. 877; 43 W.R. 219.

(ii) **C. A.**—*Street Works—Objection by Frontager—Private Street Works Act, 1892, ss. 6, 7, 8—Sheffield Corporation Act, 1890, ss. 52, 53, 54.*—On hearing an objection by a frontager to a private street work under the Sheffield Act, and, *semble*, under the Public Act, a court of summary jurisdiction, in determining whether the proposed work, as, for instance, sewerage, is unreasonable, may consider the existing state of the drainage of the houses in the street.—*Sheffield Corporation v. Anderson*, 64 L.J. M.C. 44; 72 L.T. 242.

(ii.) **Q. B. D.**—*Sewer—Repair—Liability—Public Health Acts, 1875, ss. 4, 15, 41; 1890, ss. 8, 19.*—The defendants served notice on the plaintiff to abate a nuisance caused by his drain. On opening the ground the drain was found to serve the next house as well as the plaintiff's. The plaintiff did the work and sought to recover the expenses from the defendants. *Held*, that the defendants were not liable to execute the repairs, and that the notice could not be taken to imply a request to the plaintiff to do the work on their behalf.—*Self v. Hove Commissioners*, 64 L.J. Q.B. 217; 72 L.T. 234; 43 W.R. 300.

#### Lunatic:—

(iii.) **C. A.**—*Jurisdiction—Settled Land—Bill in Parliament—Opposition—Costs of.*—There is jurisdiction in Lunacy to order the costs and expenses of an unsuccessful opposition to a Bill in Parliament affecting the estate of a lunatic tenant for life of settled land, to be paid out of the corpus of the settled property.—*In re Blake*, 72 L.T. 280.

(iv.) **C. A.**—*Power of Appointment of New Trustees—Vesting Order.*—A lunatic had a power to appoint new trustees. The master ordered that A. should exercise the power by appointing X. and Y., and that the right to call for a transfer of consols part of the trust funds should vest in them. *Held*, that the order was right, but that in similar cases the Bank of England should have some certificate by the master of the execution of the deed.—*In re Shortridge*, L.R. [1895] 1 Ch. 278; 64 L.J. Ch. 191; 71 L.T. 799; 43 W.R. 257.

(v.) **C. A.**—*Practice—Inspection of Documents.*—No one may inspect documents in the custody of the Court without an order of one of the masters or a judge in lunacy. An order will be made for the inspection of such documents, except reports to the Court from its medical advisers, by anyone who can shew that he wants it for a reasonable purpose, provided the lunatic is not injured. Privilege is no bar to inspection in lunacy. Inspection will not be allowed to a litigating party who applies for it, before trial, to find out his adversary's case. An order for inquiry into the sanity of an alleged lunatic was made on the petition of A. Pending inquiry the alleged lunatic died, leaving a will in favour of B. A. disputed probate of the will, alleging insanity and undue influence. B. applied for leave to inspect the petition and affidavits in support, to ascertain what allegations of insanity would be made in the probate action. *Held*, that the inspection ought not to be allowed.—*In re Strachan*, L.R. [1895] 1 Ch. 439; 72 L.T. 175; 43 W.R. 869.

#### Maintenance:—

(vi.) **Q. B. D.**—*Criminal Proceedings—Indemnity for Costs—Legality of.*—The doctrine of maintenance is confined to civil actions, and in criminal proceedings it is not illegal; therefore when a person gives a guarantee agreeing to indemnify a solicitor in respect of the costs of criminal proceedings to be taken against another person, an action can be maintained on the guarantee.—*Grant v. Thompson*, 72 L.T. 264.

**Manor:—**

- (i.) **Q. B. D.**—*Village Green—Title—Evidence—Manor Map—Tithes Map—Encroachments.*—Upon the question whether a general right to the waste of a manor has arisen in which the inhabitants of a township and tenants of the manor have an interest, a manor map, produced from the custody of the lord, made by a surveyor now dead, but proved by the evidence of a living witness to have been competent and acquainted with the district, and used for rating purposes, is receivable in evidence. Upon a similar question a tithe map is receivable. Where a common was not dealt with by an inclosure award made in 1873 there is no inference that it has ceased to be waste. Acts of ownership by persons who have successfully encroached upon small portions of a common do not give rise to the inference that they can make a title to the waste surrounding their encroachments.—*Smith v. Lister*, 64 L.J. Q.B. 154; 72 L.T. 20.

**Master and Servant:—**

- (ii.) **Q. B. D.**—*Liability of Master—Scope of Authority.*—The defendants' omnibus was stopped by the police because the driver was drunk. X. offered to drive it back to the yard, and the driver and conductor accepted the offer. X. drove carelessly and injured the plaintiff. *Held*, that there was evidence of such an emergency as authorised the defendants' servants to employ X., and that the defendants were liable for X.'s carelessness.—*William v. Twist*, L.R. [1895] 1 Q.B. 557; 72 L.T. 115; 43 W.R. 398.
- (iii.) **Q. B. D.**—*Shop Hours Act, 1892, ss. 3, 4, 5.*—An employer cannot be fined for employing a young person in a shop where the notice required by sect. 4 is not exhibited.—*Hammond v. Pulsford*, L.R. [1895] 1 Q.B. 223; 64 L.J. M.C. 63; 71 L.T. 767; 43 W.R. 236.

**Married Woman:—**

- (iv.) **Ch. D.**—*Gift for Life for Separate—Remainder to Executors, &c.—Effect of—Married Women's Property Act, 1882.*—When property is held upon trust for a woman married since the Act above mentioned, for life for her separate use, and in default of the exercise by her of a general power of appointment, then for her executors, administrators, or assigns, she will, on releasing the power, become absolutely entitled.—*Turner v. King*, L.R. [1895] 1 Ch. 361; 64 L.J. Ch. 252; 71 L.T. 875; 43 W.R. 217.
- (v.) **C. A.**—*Restraint upon Anticipation—Partial Removal—Costs.*—Decision of Ch. D. (*see* Vol. 20, p. 14, vii.) affirmed.—*Thorne-George v. Godfrey*, 72 L.T. 8; 43 W.R. 244.
- (vi.) **C. A.**—*Separate Estate—Restraint—Judgment Creditors—Receiver.*—Judgment creditors are not entitled to equitable execution over the rents of property of which a married woman is tenant for life for her separate use without power of anticipation, even though such rents were due before the date of the judgment.—*Pillers v. Edwards*, 71 L.T. 788.

**Mayor's Court:—**

- (vii.) **Q. B. D.**—*Judgment Debt Under £20—Summons—Jurisdiction.*—The jurisdiction of the Mayor's Court where judgment has been signed for a debt not exceeding £20, to issue and serve a judgment summons upon a debtor residing or carrying on business beyond the limits of the city, is not affected by the Debtors' Act, 1869.—*Schuller v. Wood*, 64 L.J. Q.B. 243.

**Metropolis Management:—**

- (i.) **C. A.**—“*Drain*”—“*Sewer*”—*Liability to Repair*.—Decision of Q. B. D. (see Vol. 20, p. 46, ii.) affirmed.—*Pilbrow v. Shoreditch Vestry*, L.R. [1895] 1 Q.B. 433; 72 L.T. 135; 43 W.R. 342.

**Metropolitan Carriages:—**

- (ii.) **Q. B. D.**—*Defacement of Driver's Licence—Complaint—Jurisdiction*—6 & 7 Vict., c. 86, ss. 8, 22.—A cab proprietor in entering on a driver's licence the dates of his entering and leaving his service, omitted one of the dates, and added a signature, the effect of which would be to prejudice the driver in the eyes of other proprietors. *Held*, that this was “a matter of complaint” which a police magistrate could hear; and that there was a defacement, and evidence of loss and damage on which the magistrate could assess compensation.—*Norris v. Birch*, L.R. [1895] 1 Q.B. 639; 64 L.J. M.C. 91; 43 W.R. 271.

**Mine:—**

- (iii.) **Q. B. D.**—*Coal—Timbering—Coal Mines Regulation Act, 1887, s. 49, Rule 22*—The proper construction of the rule mentioned is that props and sprags are to be used where they are “necessary,” and not where the workmen think them necessary. The question of necessity is for the justices.—*Gibbon v. Phillips*, 64 L.J. M.C. 42.

**Mistake:—**

- (iv.) **C. A.**—*Money Paid under Compulsion of Law—Action for Recovery*.—The defendants claimed from the plaintiff a contribution towards street improvement expenses, and issued a summons. The plaintiff paid the claim before the summons was heard, and it was withdrawn. He then discovered that his premises did not abut on the street in question. *Held*, that the money could not be recovered.—*Moore v. Fulham Vestry*, L.R. [1895] 1 Q.B. 399; 64 L.J. Q.B. 226; 71 L.T. 862; 43 W.R. 277.

**Negligence:—**

- (v.) **Q. B. D.**—*Damage—Remoteness*.—The plaintiff delivered a mare to the defendant to be agisted. She was placed in a field next to a cricket field, with a gate between them, which, owing to the negligence of the defendant's servants, was left open. The mare went into the cricket field while a game was being played, and the cricketers endeavoured in a careful manner to drive her back. She refused to go through the gate, ran against the fence, and was injured. *Held*, that the injury was the natural consequence of the gate having been left open, and that the defendant was liable.—*Halestrap v. Gregory*, L.R. [1894] 1 Q.B. 561; 72 L.T. 892.

**Nuisance:—**

- (vi.) **Q. B. D.**—*Injury—Cause of—Evidence*.—The defendants owned a wall eighteen inches high abutting on a highway, and topped with a row of spikes, which the jury found to be a nuisance. The plaintiff, a little girl, was found standing by the wall, with a wound in her arm which might have been caused by falling on the spikes. The plaintiff sued for damages for the injury. She was not called as a witness, and there was no evidence as to the manner of the accident, except that of a witness who had shortly before the accident seen the plaintiff climbing up the wall, and told her to get down, which she did. *Held*, that there was evidence for the jury that the nuisance had caused the accident.—*Fenna v. Clare & Co.*, L.R. [1895] 1 Q.B. 199; 64 L.J. Q.B. 288.

- (i.) **C. A.**—*Vibration—Freeholder and Reversioner—Structural Damage—Electric Lighting Acts, 1882 and 1888.*—(See Vol. 19, p. 131, iv.)—*Held* by C. A. that the defendants were not justified in committing the nuisance, and that each of the plaintiffs was entitled to an injunction and damages.—*Meux v. City of London Electric Lighting Co.; Shelford v. the Same*, L.R. [1895] 1 Ch. 287; 64 L.J. Ch. 216; 72 L.T. 34; 43 W.R. 238.

**Parish Church:—**

- (ii.) **Q. B. D.**—*Notices—Prohibition of—Registration Act, 1843.*—Where there is no parish church notices under the Act must be published in some conspicuous place in the parish. The church of parish A., in the City of London, had been pulled down, and for ecclesiastical purposes the parish had been united with parish B., but the parishes continued to exist with separate officers. *Held*, that the overseers of parish A. were not bound or entitled to affix notices under the Act exclusively on the door of the church of parish B., but must find some conspicuous place in parish A. for their exhibition. The removal of such notices by the incumbent of the united parishes from the door of the church of parish B. is not an offence under the Act.—*Hildred v. Ingram*, 64 L.J. M.C. 57.

**Partnership:—**

- (iii.) **C. A. & Ch. D.**—*Goodwill—Stipulation as to—Breach of Stipulation.*—Partnership articles between A. and B., provided that the goodwill of the business should belong to A. at the determination of the partnership. *Held*, that B. could not be restrained from making a list of the customers of the firm, with a view to future competition with A.—*Trego v. Hunt*, L.R. [1895] 1 Ch. 462; 72 L.T. 269; 43 W.R. 263 & 371.
- (iv.) **Q. B. D.**—*Loan to Trader—Participation in Profits.*—A loan to a trader for an agreed term carrying interest at five per cent., and an additional sum by way of interest equal to one-half of the profits of the business, but repayable as an aggregate debt at any time within the agreed term upon three months' notice given by the lender under certain conditions, does not of itself make the lender a partner.—*Hollom v. Nichelow*, 64 L.J. Q.B. 170.

**Patent:—**

- (v.) **Ch. D.**—*Practice—Particulars of Objections—Costs of—Patents, &c., Act, 1883, s. 29, sub-s. 6.*—Where an action for infringement has been disposed of without hearing evidence, and the Court has nothing before it to show whether the defendant's particulars of objections are reasonable and proper, it will not inquire into the facts merely to decide whether the defendant ought to be allowed the costs of the particulars. But where the plaintiff's evidence has been heard, and the particulars appear to be reasonable and proper, a certificate to that effect will be given.—*Mandleberg v. Morley*, 64 L.J. Ch. 245; 72 L.T. 106; 43 W.R. 266.

**Poor Law:—**

- (vi.) **C. A.**—*Guardians—Debt—Limitation of Time—Costs—Poor Law (Payment of Debts) Act, 1859, s. 1.*—Where a judgment of the House of Lords directed guardians to pay costs, *held*, that there was a debt due from them at the time of the delivery of the judgment, and not when it was drawn up, or when the costs were taxed; and that the time within which the debt must be recovered ran from such delivery of judgment.—*West Ham Guardians v. Bethnal Green Churchwardens*, L.R. [1895] 1 O.R. 662.

- (ii) **C. A.**—*Guardians—Limitation of time for Payment of Debt—Costs—Application for Taxation—Quarter Sessions—Taxation out of Sessions.*—An appeal to quarter sessions against an assessment of the appellants' premises having been allowed with costs, the appellants applied to the clerk of the pence, within three months, to tax the costs. *Held*, that this was not a commencement of proceedings before a competent authority to enforce payment, and that as subsequent proceedings were not commenced within three months, the guardians were not liable. When a court of quarter sessions orders payment of costs, and consent to a taxation out of sessions is not given, no subsequent Court can order taxation. *M.R. v. Edmonton Guardians*, L.R. [1895] 1 Q.B. 857; 64 L.J. Q.B. 113; 71 L.T. 206; 43 W.R. 309.
- (iii) **H. L.**—*Rating—Lighting Rate—Coal Mines—"Land."*—Decision of C. A. (see Vol. 19, p. 183, v.) affirmed.—*Thuraby v. Briercliffe Churchwardens*, L.R. [1895] A.C. 82; 64 L.J. M.C. 66; 71 L.T. 849.
- (iii.) **H. L.**—*Rating—Easement.*—Decision of C. A. (see Vol. 19, p. 51, v.) reversed.—*Holywell Assessment Committee v. Halkyn District Mines Drainage Co.*, 71 L.T. 818.

### Practice:—

- (iv.) **Q. B. D.**—*Attachment—Affidavit—Service of—R.S.C., 1883, O. xli., r. 5; O. lii., r. 4.*—The copy of the affidavit to be used in support of a motion for attachment, must state that the order is endorsed with the memorandum pointing out the consequences of neglecting to obey it, and if such statement is omitted, the service is insufficient.—*Stockton Football Co. v. Gaston*, L.R. [1895] 1 Q.B. 453; 64 L.J. Q.B. 228.
- (v.) **Ch. D.**—*Attachment—Writ—Service—Indorsement—R.S.C., 1883, O. xli., r. 5.*—The special memorandum which under the rule is to be indorsed upon the copy of a judgment or order served upon a person required to obey the same, is not necessary in the case of a merely prohibitive order.—*Hudson v. Walker*, 64 L.J. Ch. 204.
- (vi.) **Ch. D.**—*Costs—Petition instead of Summons—Order for Sale of Debtor's Interest.*—Where a judgment creditor in possession had proceeded by petition instead of by originating summons, under *R.S.C., 1883, O. iv., r. 9b*, the costs of proceedings initiated by summons were only allowed.—*In re Martin and Varlow*, 43 W.R. 247.
- (vii.) **C. A.**—*Discovery—Interrogatories—Relevancy.*—The plaintiff the trustee in bankruptcy of C. alleged that C. and the defendant had been in partnership as dealers in land, and claimed that the defendant was liable to account for C.'s share in certain properties which had been conveyed to C. and the defendant as tenants in common, as being partnership property. The defendant denied the partnership. The plaintiff, in interrogating the defendant, asked for a list of properties in which he and C. had been jointly interested, prior and subsequent to a certain date, and to state whether there were any, and what, written articles of agreement between them with reference to the purchase of land. *Held*, that these interrogatories were irrelevant.—*Kennedy v. Dodson*, L.R. [1895] 1 Ch. 334; 64 L.J. C.A. 257; 71 L.T. 172; 43 W.R. 259.
- (viii.) **C. A.**—*Discovery—Answer tending to Criminate.*—Decision of Q. B. D. (see Vol. 19, p. 185, i.) affirmed.—*Alabaster v. Harness*, L.R. [1895] 1 Q.B. 339; 64 L.J. Q.B. 76; 71 L.T. 741.
- (ix.) **C. A.**—*Discovery—Banker's Pass-books—Bankers' Books Evidence Act, 1879, s. 7.*—Where a plaintiff's affidavit or documents schedules his banker's pass-book, the defendant may inspect the entries therein.—*Perry v. Phoenix Bronze Co.*, 71 L.T. 854.

- (i.) **C. A.**—*Dismissal for Want of Prosecution*.—Where the Court of Appeal has ordered a new trial, and the party who has obtained the order has not entered the action for trial, the Court of Appeal has no original jurisdiction to entertain a motion to dismiss for want of prosecution. Application should be made in chambers.—*Roberts v. French*, 71 L.T. 147; 43 W.R. 258.
- (ii.) **C. A.**—*Equitable Execution—Receiver*.—Where the circumstances are exceptional a receiver may be appointed *ex parte* by way of equitable execution.—*Minter v. Kent, Sussex, and General Land Society*, 72 L.T. 186.
- (iii.) **P. D.**—*Equitable Execution—Divorce—Costs—Receiver—Reversionary Interest*.—Where the co-respondent is ordered to pay the petitioner's costs, a receiver may be appointed in respect of his interest in property, being a contingent reversionary interest under a will which contains a clause forfeiting his interest upon his charging the same, and such appointment does not of itself create a charge within the clause.—*Campbell v. Campbell*, 72 L.T. 294.
- (iv.) **Q. B. D.**—*Interpleader—Sheriff—Goods Seized—Delivery to Claimant*.—Where a sheriff has delivered over goods taken in execution to a claimant whose title is admitted by the execution creditor, he cannot seek the protection of the Court by means of interpleader proceedings.—*Moore v. Hawkins*, 43 W.R. 235.
- (v.) **C. A.**—*Mayor's Court—Prohibition—Want of Jurisdiction—Waiver of Objection*.—A defendant does not, by entering an appearance without protest in an action in the Mayor's Court, waive his right to object to the jurisdiction when he ascertains the exact nature of the plaintiff's claim.—*Lee v. Cohen*, 71 L.T. 824.
- (vi.) **Q. B. D.**—*Pauper—Appeal*.—A party who has sued or defended in *formâ pauperis* in the Court below is entitled to appeal as a pauper without either giving security for costs or obtaining special leave so to appeal.—*Biggs v. Dagnall*, L.R. [1895] 1 Q.B. 207; 64 L.J. Q.B. 221.
- (vii.) **Ch. D.**—*Legacy to Children to be paid at Eighteen—Payment out*.—Where a legacy is given to children to be paid when they respectively attain the age of eighteen, with a declaration that their receipts at that age shall be sufficient discharges notwithstanding minority, the Court will order payment of their shares to children who have attained eighteen, and give liberty to those under that age to apply for payment when they respectively attain the age of eighteen.—*Peters v. Tauchereau*, 72 L.T. 220.
- (viii.) **C. A.**—*Summons in Chambers—Reference to Court—Appeal*.—In matters of practice and procedure a judge in chambers has now no power to refer a summons to the Divisional Court. Such a summons cannot be referred to the Court of Appeal. The Judge should either make or refuse an order, giving leave to appeal if necessary.—*Hood Barrs v. Cathcart*, 72 L.T. 181.
- (ix.) **C. A.**—*Third-party Procedure—Notice by one Defendant to Another—Mode of Objection—R.S.C., 1883, O. xvi., rr. 52, 55*.—Where one defendant serves another with a third-party notice, the proper course if the latter objects to have the question between them decided in the action, is not to apply to have the notice set aside, but to take the objection on the summons for directions.—*Baxter v. France*, L.R. [1895] 1 Q.B. 455; 72 L.T. 146; 43 W.R. 227.
- (x.) **C. A.**—*Third-party Procedure—Refusal to Give Directions—R.S.C., 1883, O. xvi., rr. 52, 55*.—The defendants in an action for recovery of land claimed against a co-defendant, their vendor, damages for breach of implied covenants, and an indemnity. It was doubtful in point of law whether there was any right to indemnity. *Held*, that the Judge



at chambers was right in refusing to give directions as to procedure, as there was not a question proper to be tried in the action as to the liability of the co-defendant as third party.—*Baxter v. France*, L.R. [1895] 1 Q.B. 591; 71 L.T. 188; 43 W.R. 841.

- (i.) **C. A.**—*Taxation—Review—Summons for—Appeal—R.S.C.*, 1883, O. liv., r. 24.—A summons for a review of a solicitor's bill of costs is a "matter of practice or procedure" in respect of which an appeal lies from a judge in chambers to the Court of Appeal, and not to a Divisional Court.—*In re Oddy*, L.R. [1895] 1 Q.B. 392; 64 L.J. Q.B. 123; 71 L.T. 861; 43 W.R. 863.
- (ii.) **Ch. D.**—*Vesting Order—Trustee Refusing to Transfer—Time—Costs—Trustee Act*, 1893, ss. 35 (ii) (d), 38.—Jurisdiction to make a vesting order under the section mentioned on the ground that a trustee has refused to transfer stock for twenty-eight days next after a request in writing made pursuant to the section, does not arise until the twenty-eight days have expired, and an order cannot be made upon a petition presented sooner. On petition for such an order the respondent, the recusant trustee, may be ordered to pay the costs.—*In re Knox's Trusts*, L.R. [1895] 1 Ch. 538.
- (iii.) **C. A.** *Writ—Specially Indorsed—Amendment—Judge at Chambers—Referent—R.S.C.*, 1883, O. xiv.—On the hearing of a summons in an action on a cheque the defendant objected that the indorsement did not state that notice of dishonour had been given. The summons was adjourned, and the plaintiff amended the indorsement without leave by adding the statement. *Held*, that an order for judgment could rightly be made at the adjourned hearing of the summons. A judge at chambers cannot now refer a summons to the Divisional Court or the Court of Appeal, but ought to adjudicate thereon.—*Roberts v. Plant*, L.R. [1895] 1 Q.B. 597; 71 L.T. 878; 72 L.T. 181; 43 W.R. 808.

### Principal and Agent:—

- (iv.) **C. A.**—*Personal Liability of Agent—Money Paid for Principal under Duress—Payment to Agent before Notice—Receiver under Trust Deed.*—A deed executed by a company to secure debentures empowered the trustees to appoint a receiver in certain events as if they were mortgagees. The receiver was to have the power of a receiver under the Conveyancing Act, 1881, and also power to exercise any of the powers conferred by the deed upon the trustees. He was to be deemed the agent of the company. *Held*, that a receiver appointed under the deed, and, in accordance with the powers conferred, carrying on the business under the name of the company, was a mere agent, and incurred no personal liability. The defendant was appointed receiver, and carried on the business. After his appointment the manager of the business, without the defendant's knowledge, compelled the plaintiff, under "duress of goods," to pay a sum for work done which the plaintiff considered exorbitant. The defendant received the money, without knowledge of the duress, and paid it to an account which he had opened as receiver. *Held*, that such payment was a payment as agent to his principal, and that the defendant was not personally liable, as he had no notice of the alleged extortion.—*D. Owen & Co. v. Cronk*, L.R. [1895] 1 Q.B. 265.

### Principal and Surety:—

- (v.) **Ch. D.**—*Power to Determine Liability of Surety—Death of Surety—"Representatives."*—A joint and several continuing guaranty bond provided that any one of the obligors, or their respective "representatives," might determine his or their liability by a month's notice in

writing. One of the obligees died, and his executor, who was unaware of the bond, gave the obligees notice only of his death. *Held*, that "representatives" included executor, and that the estate of the deceased was liable, notwithstanding the notice, for debts incurred by the principal debtor after his death.—*M.R. v. Silvester*, L.R. [1895] 1 Ch. 578; 72 L.T. 283.

# **Railway:—**

- (i.) **Q. B. D.**—*Excursion Ticket—Condition Indorsed—Passenger Travelling Beyond Terminal Station—Contract.*—The plaintiffs issued excursion tickets from P. to W., which bore on the back a condition that if used for any other stations they would be forfeited. The defendant took an excursion ticket to W., but travelled on to H., where he tendered the first half of the excursion ticket and the excess fare. The plaintiffs refused the excess fare. In returning the defendant took a ticket to W., and, on arriving at P., tendered the second half of the excursion ticket and the ticket from H. to W., which were refused. *Held*, that assuming that the condition on the back of the ticket was known to the defendant, the plaintiffs were entitled to treat the excursion ticket as forfeited.—*G.N.R. v. Palmer*, 72 L.T. 287; 43 W.R. 316.
- (ii.) **Ch. D.**—*Land Taken—User of—Building Estate—Injury to.*—A railway having taken a part of an estate which was being developed as a building estate, let a small piece which was not immediately required for the purposes of the railway, for the erection of a chapel. The owner of the building estate objected on the ground that it was prejudicial to his estate, and sued for an injunction. No damage was proved as likely to accrue. *Held*, that the user of the land was not unreasonable nor inconsistent with company's objects, and that the action would fail even if damage were shown.—*Onslow v. M.S. & L.R.*, 72 L.T. 256.
- (iii.) **C. A.**—*Purchase of Land—Compensation—Minerals—Railways Clauses Act, 1845, ss. 77-80.*—Decision of Q. B. D. (see Vol. 20, p. 52, vi.) affirmed.—*In re Lord Gerard and L. & N.W.R.*, L.R. [1895] 1 Q.B. 459; 72 L.T. 142.
- (iv.) **C. A.**—*Traffic—Rate for Forwarding—Jurisdiction.*—By the special Act of the B. company it was enacted that the T. company should forward traffic to or from the B. company's line at rates not greater than the lowest rate charged by the T. company, and that if on application by the B. company the Railway Commissioners, sitting as arbitrators, should decide that the T. company had failed to give any of the facilities provided for, the B. company should have running powers over the line of the T. company. *Held*, that the Court had jurisdiction to entertain the complaint of the persons aggrieved by an overcharge; and that neither the special Act, nor the Railway and Canal Traffic Act, 1888, gave the Railway Commissioners exclusive jurisdiction.—*Barry Railway Co. v. Taff Vale Railway Co.*, L.R. [1895] 1 Ch. 128; 64 L.J. Ch. 280; 71 L.T. 688; 43 W.R. 372.
- (v.) **Ch. D.**—*Underground Railway—Right to Use Subsoil—"Appropriate."*—A special Act (incorporating the Lands Clauses Act, 1845) empowered a company to make an underground railway, and provided that they might "appropriate and use" the subsoil of the plaintiff's land without wholly taking the land, subject to the liability to make compensation under sect. 68 of the Lands Clauses Act. The company began to bore a tunnel under the plaintiff's land. *Held*, that they were not merely taking an easement, but "land"; that "appropriate" meant "appropriate by way of purchase"; and that they could not "appropriate and use" the subsoil without complying with the provisions of

the Lands Clauses Act with respect to the purchase of land. *Semble*, the provisions of such Act with respect to the entry on lands before agreement apply to the case.—*Farmer v. Waterloo and City Railway Co.*, L.R. [1895] 1 Ch. 527; 72 L.T. 225; 43 W.R. 353.

- (i.) **Railway and Canal Commission Court.**—*Practice—Association of Traders—Complaint Against Increase of Rates—Particulars—Names of Traders—Railway and Canal Traffic Acts, 1888 and 1894, ss. 7, 31; s. 1, sub-ss. 1, 3, 4.*—Upon a complaint by an association of traders that a railway company had since the last day of December, 1892, increased its rates, and that such increased rates were unreasonable, *held*, that the company were not entitled to an order for particulars of the names of the traders represented by the association.—*The Mansion House Association on Railway and Canal Traffic v. G.W.R.*, 72 L.T. 296.

### Registration:—

- (ii.) **Q. B. D.**—*Service Franchise—Police—Constable.*—A police constable occupied exclusively, by virtue of his employment, a cubicle, being a portion of a large room, separated by partitions not reaching to the ceiling. *Held*, that the cubicle was not separately occupied as a dwelling within sect. 5 of the Parliamentary and Municipal Registration Act, 1878.—*Barnett v. Hickmott*, 72 L.T. 236; 43 W.R. 264.

### Revenue:—

- (iii.) **Q. B. D.**—*Fines on Renewal of Leases—Applied as Productive Capital—Deposit at Bank—Property Tax Act, 1842, s. 60, sched. A, r. 2, sub-s. 5.*—Fines received on renewal of leases and deposited at a bank pending permanent investment are not "applied as productive capital," so as to be exempt from property tax.—*Lord Mostyn v. London*, L.R. [1895] 1 Q.B. 170; 64 L.J. Q.B. 106; 71 L.T. 760; 43 W.R. 330.
- (iv.) **Q. B. D.**—*Income Tax—Cost-book Mines—Capital or Working Expenses.*—In respect of capital there is no difference between a cost-book mine and any other mine; and the question whether the expense of sinking a new shaft is capital expenditure or working expenses is a question of fact to be decided on the circumstances.—*Morant v. Wheel Greville Mining Co.*, 71 L.T. 758.
- (v.) **C. A.**—*Income Tax—English Company—Business Abroad—Profits not Remitted to England.*—Decision of Q. B. D. (see Vol. 20, p. 54, v.) reversed.—*San Paulo Brazilian Railway Co. v. Carter*, L.R. [1895] 1 Q.B. 580; 72 L.T. 244; 43 W.R. 339.
- (vi.) **Q. B. D.**—*Probate and Estate Duties—Legatees identified by Reference to another Will—Customs and Inland Revenue Acts, 1881; 1889, s. 5.*—A testator bequeathed his personal estate to his brother, and directed that if the brother should pre-decease him, it should go to his executors or administrators, as if the brother had survived, and died immediately after the testator. The brother died before the testator, leaving a will, whereby he appointed executors. *Held*, that the brother's executors were not chargeable with double duties.—*Attorney-General v. Loyd*, L.R. [1895] 1 Q.B. 496.
- (vii.) **P. C.**—*Probate Duty—Business in England and Victoria.*—Testator carried on business in England in the firm of "F. and Sons," and in Victoria in the firm of "F. and Co." The partners were the same in both firms, and were domiciled in England. The goods sent to Victoria were bought in Europe, and paid for by money sent from Victoria. The books of the two firms were kept distinct, and the profits in Victoria were remitted to the partners in England. *Held*, that the business of "F. and Co." was situate in Victoria, and that the interest of the testator in it was liable to probate duty in Victoria.—*Beaver v. Master in Equity of the Supreme Court*, 72 L.T. 127.

- (i.) **Q. B. D.—Stamp Act, 1891, ss. 72, 75, and Schedule—Bond—Security—Lease.**—By instrument under seal a telephone company agreed to supply J. with a wire and apparatus, in consideration of an annual payment by quarterly instalments. The agreement was to continue for ten years, and thereafter, from year to year, determinable as provided. Power was given to the company to determine on failure to pay the annual sum, and to recover damages for such failure; and also to enter for repairing. The exclusive use of the wire and apparatus was reserved to J. *Held*, that the instrument was chargeable with duty as a bond, being the security for money payable at stated periods, and not as a lease.—*Jones v. Inland Revenue Commissioners*, 64 L.J. Q.B. 84; 71 L.T. 763.
- (ii.) **Q. B. D.—Stamp Duty—Bond—Security—Stamp Act, 1891, ss. 72, 75, and Schedule.**—By instrument under seal a railway company agreed to allow the appellants to erect and maintain a certain number of machines at certain stations in consideration of an annual payment, subject to a power of determining the agreement, the company to, have power to shift the machines or to remove them to other stations. *Held*, that the instrument was chargeable as a bond or covenant to secure a sum of money at stated periods.—*Sweetmeat Automatic Delivery Co. v. Inland Revenue Commissioners*, L.R. [1895] 1 Q.B. 484; 64 L.J. Q.B. 84; 71 L.T. 763; 43 W.R. 318.

**Riparian Owner:—**

- (iii.) **P. C.—Navigable River—Sale of Water Power.**—A riparian owner may acquire a right to water power in a navigable river, and sell the same as appurtenant to land. A. sold to X. a piece of land on the bank of a river, "together with a quantity of water power, equivalent to 50 horse-power, to be taken off from the water power and dam of the said vendors," with a warranty "against all troubles and hindrances whatsoever." *Held*, that the purchaser was entitled to a supply of water power in priority to the vendor, or his tenants, in case the supply should fall short of the requirements of all parties.—*Hamelin v. Bannerman*, 72 L.T. 129.

**Sale of Goods:—**

- iv.) **Q. B. D.—Hire-purchase Agreement—Fraudulent Sale by Hirer—Conviction—Reverting of Title—Sale of Goods Act, 1893, s. 24.**—Where the hirer of goods under a hire-purchase agreement fraudulently sold them, before the instalments were paid, and was convicted for larceny as a bailee, *held*, that the title to the goods had passed to the purchaser under the Factors' Act, 1884, and did not revert to the original owner on conviction.—*Payne v. Wilson*, L.R. [1895] 1 Q.B. 653; 72 L.T. 110; 43 W.R. 250.
- (v.) **Q. B. D.—Memorandum in Writing—Acceptance—Sale of Goods Act, 1893, s. 4, sub-ss. 1, 3.**—The defendant made a contract to buy hay from the plaintiff to be delivered on July 21st. He after that date, the hay not having been delivered, verbally agreed to accept delivery on August 8th. On that day, the hay having arrived, he went on board the barge in which it was, took a sample, and refused the hay as not being according to contract. *Held*, that there was no memorandum in writing of a contract to deliver on August 8th, and that there was no such dealing with the goods as to constitute an acceptance.—*Abbott & Co. v. Wolsey*, 72 L.T. 117; 43 W.R. 270.

**Scotch Law:—**

- (vi.) **H. L.—Pledge—Redelivery to Pledgor—Conflict of Laws.**—The pledgors of a bill of lading representing a specific cargo were under contract to sell a larger quantity of like goods to a third party. The pledgees

returned the bill of lading to the pledgors to enable them to get possession of the goods and sell on the pledgee's behalf, and account for the proceeds. *Held*, that their security was not affected, and that they were entitled to the proceeds of the cargo, as against general creditors of the pledgors. A question between parties domiciled in England as to a movable fund situated in Scotland is generally a question of English law.—*North-Western Bank v. Poynter*, L.R. [1895] A.C. 56; 72 L.T. 93.

### Settlement:—

- (i.) **Ch. D.**—*Postnuptial—Valuable Consideration—Cesser of Interest on Bankruptcy—Married Women's Property Act, 1882, s. 3.*—The section above mentioned only applies where the wife's property has been lent to the husband for the purposes of his trade or business. A husband received from his wife some of her separate property, part of which he lost in speculation. He then settled the remainder and some property of his own on the usual trusts, the husband's life interest being determinable on bankruptcy. He was made bankrupt, and the trustee sought to set aside the settlement. *Held*, that the wife was a purchaser for valuable consideration and in good faith, and that the settlement was good. *Held*, also, that to the extent of the wife's money lost by the husband, the property brought into settlement by him was the wife's property, and that it might be limited to him until bankruptcy.—*Mackintosh v. Pogose*, L.R. [1895] 1 Ch. 505; 64 L.J. Ch. 274; 72 L.T. 251; 43 W.R. 247.

### Ship:—

- (ii.) **Q. B. D.**—*Charter-party—Demurrage—Strikes.*—A ship was chartered to go to A., and load a cargo of coal "in the customary manner, say in twelve colliery working days," "Strikes and lock-outs of pitmen and others" being excepted perils. It was provided, "It is understood that the vessel is to be loaded at once, and lay days to count when vessel ready and notice given." She arrived at A., and notice was given, but before the twelve days had elapsed a strike took place, and she was not loaded till twenty-three working days had passed. *Held*, that the last proviso only fixed the time when the lay days began, that the delay was caused by an excepted peril, and that no demurrage was payable.—*Petersen v. Dunn & Co.*, 43 W.R. 349.
- (iii.) **P. D.**—*Collision—Anchoring in Thames—Thames Bye-Laws, 1887, Art. 18; 1892, Art. 7 (c).*—When a steamship anchors in the Thames on account of fog, she must, while lying across the stream, not having yet swung to her anchor, give rapid blasts with her whistle. She ought to take in her side-lights when the anchor holds, and if more than 150 feet long, shew a second riding light near the stern, although she has a stern light shewing twenty points.—*The W'ega*, L.R. [1895] P. 156.
- (iv.) **P. D.**—*Collision—Compulsory Pilotage—Port of Bristol.*—*Held*, that the boundary of the port of Bristol as defined by the Pilotage Order Confirmation Act, 1891, is a straight line between the Holms and Aust. *Held*, also, that where a collision happened outside the port of Bristol but within the Bristol Channel Pilotage District, within a part of which (namely, the port of Bristol) pilotage was compulsory, as one pilotage rate was payable to a part of the district beyond the place of the collision, the defendants were not liable for the negligence of the pilot.—*The Charlton*, 72 L.T. 198.
- (v.) **P. D.**—*Compulsory Pilotage—Coasting Trade—Merchant Shipping Act, 1854, s. 379—Order in Council, 21st December, 1871.*—A vessel carrying cargo for delivery at a foreign port is not engaged in the

coasting trade, even though she goes from one home port to another to complete her cargo, and is therefore not exempt from compulsory pilotage. The word "Europe" in the section and Order mentioned is used in contra-distinction to the "United Kingdom," and therefore a ship trading to Cardiff is not trading to a place in Europe, north and east of Brest, and is not exempt from compulsory pilotage.—*The Winestead*, 72 L.T. 91.

- (i.) **Q. B. D.**—*Compulsory Pilotage—Qualification—Merchant Shipping Act, 1854, s. 353.*—A. held a licence entitling him to conduct exempted ships only up and down the Thames. B. was master of an unexempted ship which A. offered to pilot in the Thames, no pilot licensed for unexempted ships having offered himself. B. refused and employed an unlicensed pilot. *Held*, that A. was not a qualified pilot for the purpose of B.'s ship, and that B. was not liable to a penalty for refusing him.—*Stafford v. Dyer*, L.R. [1895] 1 Q.B. 566; 72 L.T. 114.
- (ii.) **H. L.**—*Consignee for Sale—Liability for Freight.*—Decision of C. A. (see Vol. 19, p. 103, iv.) reversed.—*White & Co. v. Furness, Withy & Co.*, L.R. [1895] A.C. 40; 64 L.J. Q.B. 161; 72 L.T. 157.
- (iii.) **C. A.**—*General Average.*—Decision of P. D. (see Vol. 20, p. 56, ii.) affirmed.—*The Bona*, L.R. [1895] P. 125; 71 L.T. 870; 43 W.R. 289.
- (iv.) **C. A.**—*Insurance—Policy Partly Written and Partly Printed—Attachment.*—Decision of Q. B. D. (see Vol. 20, p. 24, i.) reversed.—*Hydarnes Steamship Co. v. Indemnity Mutual Marine Assurance Co.*, L.R. [1895] 1 Q.B. 500; 72 L.T. 102.
- (v.) **C. A.**—*Insurance—Payment to Insurance Broker—Bills of Exchange.*—Policies of insurance on the plaintiffs' goods were effected with the defendants by brokers. The plaintiffs authorised the brokers to settle their claim against the defendants, and to receive payment in cash according to the custom. The brokers took a three months' bill instead of cash. They discounted the bill, and it was eventually paid by the defendants. The brokers failed and did not pay the plaintiffs. *Held*, that the taking of the bill was not within the brokers' authority, and contrary to custom, and did not constitute a payment to the plaintiffs, even though paid when due.—*Hine Brothers v. Steamship Insurance Syndicate*, 72 L.T. 79.
- (vi.) **Q. B. D.**—*Insurance—Freight—"Cancellity of Charter"—Delay.*—A policy upon freight provided "no claim arising from the cancelling of any charter shall be allowed." The vessel on her way to a port of loading under a charter-party was so delayed by the perils of the sea that the contemplated voyage became impossible; but the charter was never actually set aside. *Held*, that the charter was "cancelled" within the meaning of the policy, and that the insurers were not liable.—*In re Jamieson and the Newcastle Steamship Freight Insurance Association.*—L.R. [1895] 1 Q.B. 510; 64 L.J. Q.B. 222; 72 L.T. 195.
- (vii.) **P. D.**—*Joint Liability—Payment by one Wrong-Doer—Indemnity—Mercantile Law Amendment Act, 1856, s. 5.*—The section above-mentioned only applies where there is a joint debt existing before the judgment creating the liability, and, further, where the joint liability arises out of contract, express or implied.—*The Englishman (No. 2)*, 72 L.T. 203.
- (viii.) **P. D.**—*Limitation of Liability.*—The owner of a sailing-ship, in calculating the registered tonnage upon which his statutory liability in damages is based, may deduct the navigation spaces mentioned in The Merchant Shipping (Tonnage) Act, 1889, s. 3, sub-s. 1 (a) (b) (i) (ii).—*The Pilgrim*, L.R. [1895] P. 117.

- (i.) **P. D.—Jurisdiction—Writ in Rem—Removal of Ship—Judgment by Default.**—Due service of a writ in rem, without arrest of the ship, is sufficient to notice to the persons interested to found jurisdiction, and to enable the Court to give judgment against them by default. Judgment by default was given where the ship of the defendant, in an action for damage to cargo, was secretly removed out of the jurisdiction, after service of the writ in rem, but before arrest.—*The Nautik*, L.R. [1895] P. 121; 72 L.T. 21.
- (ii.) **P. D.—Salvage—Fire—Ship in Dock.**—A fire broke out on a ship lying in dock. Another ship extinguished the fire by her fire hose. The service might have been rendered by a fire engine ashore. *Held*, that it was not a case of sea salvage, and that an offer of £200, the value of the salvaged vessel being £9,500, was sufficient.—*The City of Newcastle*, 71 L.T. 848.
- (iii.) **C. A.—Practice—Salvage—Appeal—Costs.**—It is the general rule, when the amount of salvage is reduced on appeal, to allow no costs of the appeal. There is, however, a discretion to give costs in any particular case.—*The Gipsy Queen*, 43 W.R. 359.
- (iv.) **P. D.—Practice—Salvage—Consolidation.**—The Court orders consolidation of salvage suits from considerations of convenience and economy without regard to the consent of the parties.—*The Strathgarry*, 72 L.T. 202.
- (v.) **P. D.—Practice—Function of Assessors—Opinion of Judge.**—In a collision action in the county court, the nautical assessors considered that the plaintiff was to blame. The Judge formed an opinion in favour of the plaintiff, which he expressed, but, yielding to his assessors, gave judgment for the defendant. *Held*, on these facts, that the Court could not alter the decision.—*The Fred*, 72 L.T. 158.

#### Slander:—

- (vi.) **C. A.—Imputation of Misconduct in Public Office—Special Damage.**—An action will lie without special damage for words implying dishonesty or malversation in a public office of trust, though it is not one of profit, and whether or not there is a power of removal from the office for such misconduct.—*Booth v. Arnold*, L.R. [1895] 1 Q.B. 571; 43 W.R. 360.

#### Solicitor:—

- (vii.) **C. A.—Company—Costs of Private Act—General and Separate Capital.**—Decision of Q. B. D. (see Vol. 20, p. 25, i.) reversed.—*Nichols v. North Metropolitan Railway and Canal Co.*, 71 L.T. 836.
- (viii.) **Ch. D.—Taxation—Delivery of Bill—Common Order.**—An action for dissolution of partnership was instituted, and there were negotiations for a settlement. The plaintiff's solicitors sent to the defendant's solicitors a draft agreement, which provided for payment of the plaintiff's costs by the defendant. They also sent their draft bill of costs for £48 19s., with a letter explaining that it was sent that it might be perused and the agreed amount inserted in the agreement. Accordingly £45 was inserted in the agreement as the agreed amount. The action was abandoned, and the defendant then obtained the common order to tax. *Held*, that the sending of the bill, as stated, was not a delivery of the bill, and that the defendant was not entitled to a common order to tax.—*In re Hulbert v. Crowe*, 71 L.T. 748.

**Specific Performance:—**

- (i.) **Ch. D.**—*Lease—Agreement for—Omission of Date of Commencement—Agreement not to Underlet without Licence—Responsible Underlease.*—Plaintiff and defendant signed an agreement on March 28th, by which defendant agreed to take an underlease of a house. The date of commencement of the underlease was not mentioned, but was understood to be April 7th, and this date was afterwards agreed to by letter. *Held*, that there was a good contract on March 28th. The plaintiff's lease contained a covenant not to underlet without licence, the licence not to be refused in the case of a responsible undertenant. The defendant was a responsible tenant, but the lessor refused his licence except on certain terms. *Held*, that the defendant would get a good title and ran no substantial risk, and must specifically perform the contract.—*White v. Hay*, 72 L.T. 281.

**Trade Mark:—**

- (ii.) **Ch. D.**—*Invented Word—Registration—Patents, &c., Acts, 1883, s. 64, 1888, s. 10, sub-s. 1 (d) (e).*—Tea merchants registered a combined word "Mazawatee," composed of a Hindoo word "maza," meaning taste, and a Cingalese word "wattee," meaning a garden. *Held*, that it was an invented and not a descriptive word, and was properly registered.—*In re Densham's Trade Mark*, 64 L.J. Ch. 286; 72 L.T. 148.

**Trade Name:—**

- (iii.) **C. A. & Q. B. D.**—*Name Indicating Manufacturer—Common Law Right—True Description.*—A manufacturer is entitled, as of common law right, to call his goods by a name which is merely a substantially true description of them, although by reason of another person having for many years sold similar goods under that name purchasers may be misled into the belief that they are buying that person's goods.—*Reddaway v. Banham*, L.R. [1895] 1 Q.B. 286; 72 L.T. 73; 43 W.R. 294.

**Trustee:—**

- (iv.) **Ch. D.**—*Reversionary Legatee—Right to Information—Costs—R.S.C., 1883, O. lxx., r. 11.*—The plaintiff being entitled under a will to one-ninth share of £900 on the death of a tenant for life, demanded from the trustees particulars of the investments of the testator's estate. The estate was amply sufficient. *Held*, that he was entitled to the particulars. The plaintiff's solicitor having shown unreasonable haste in commencing litigation, the order for the particulars was made without costs, and an order was made that the solicitor should be disallowed costs against his own client.—*Sawyer v. Goddard*, L.R. [1895] 1 Ch. 474.
- (v.) **C. A.**—*Unreasonable Conduct—Liability.*—Though a trustee is honest, if he, through over caution or otherwise, acts unreasonably, vexatiously, and oppressively, and thereby causes expense, he must bear such expense, and not throw it upon the trust funds.—*Freeman v. Parker*, 72 L.T. 66.

**Vendor and Purchaser:—**

- (vi.) **Ch. D.**—*Contract—Right to Rescind—Exercise of.*—Where a vendor has a right to rescind the contract in case the purchaser should insist on a requisition, he must exercise the right fairly, and may not keep the purchaser in ignorance of his intentions while he is negotiating with an alternative purchaser.—*Smith v. Wallace*, L.R. [1895] 1 Ch. 385; 64 L.J. Ch. 240; 71 L.T. 814.



(i.) **Ch. D.—Title—Legal Estate of Trustees—Extent of.**—A. devised freeholds and copyholds to trustees upon trust to pay rents and profits to B. for life, and after her death to stand seised upon trust for such persons as B. should appoint, and in default of appointment the testator devised the estate to B. in fee simple. The trustees were admitted tenants. B., by will, directed them to sell the copyholds. The trustees of her will sold the copyholds, the title commencing with the will of A., the trustees of which were stated to be dead. The purchaser required that the devolution of the legal estate should be traced. The vendors replied that the trustees of A.'s will took only an estate for B.'s life. *Held*, that the legal estate was vested in the trustees of A.'s will, and that the purchaser's requisition had not been sufficiently answered.—*In re Townend's Contract*, 43 W.R. 392.

### Vestry:—

(ii.) **Q. B. D.—Metropolis—Vestryman—Disqualification—Quo Warranto—Metropolis Management Act, 1855, ss. 6–10, 37, 54.**—The writ of *quo warranto* will not lie against a vestryman, who has ceased to be qualified, unless he has acted as vestryman since disqualification.—*Reg. v. Williams*, 64 L.J. M.C. 34.

### Warranty:—

(iii.) **C. A. & Q. B. D.—Given in Error—Damage—Right of Principal to Sue.**—The plaintiff contracted to supply the defendant's ship, then at N., with coals. He telegraphed to his house at N. with instructions as to drawing on the defendant. The telegram contained a code word which meant that the ship was to go to R. By a mistake in transmission the word was altered into one which meant that she was to go to C. The master of the ship was informed, and received a letter from the plaintiff's house confirming the accuracy of the information, and went to C., which caused the defendant a loss, for which he counter-claimed in an action for the price of the coal. *Held*, that the letter to the master was a warranty on which the defendant could sue; and that he was entitled to succeed on the counter-claim.—*Brown v. Law*, 71 L.T. 770 and 72 L.T. 185.

### Water Company:—

(iv.) **C. A.—Parliamentary Powers—Interference with Water Supply.**—Decision of Ch. D. (see Vol. 20, p. 27, vi.) reversed.—*Corporation of Bradford v. Pickles*, L.R. [1895] 1 Ch. 145; 64 L.J. Ch. 101; 71 L.T. 793.

### Weights and Measures:—

(v.) **Q. B. D.—Milk Churns—Weights and Measures Act, 1878, s. 25.**—A., a farmer, sent milk to X. in churns, each marked as containing a specified quantity, and containing a gauge indicating the quantity of milk. Two of the churns were tested, and found to contain two pints less than the marked quantity. *Held*, that the churns were measures within the Act, and were false, and that A. was rightly convicted.—*Harris v. London County Council*, L.R. [1895] 1 Q.B. 240; 64 L.J. M.C. 81; 71 L.T. 844.

### Will:—

(vi.) **Ch. D.—Construction—Annuity—Charge of.**—Testator devised to H. lands subject to a previous interest, and charged the reversion thus created with the payment of an annuity to S., the first payment to be made six months after the testator's death. *Held*, that the annuity commenced at the testator's death, but was only charged on the reversion at the termination of the preceding interest.—*Williams v. Williams*, 43 W.R. 375.

- (i.) **C. A.—Construction—Class—Next-of-Kin—Time for Ascertaining.**—The ultimate trusts of a testator's real and personal estate were for his "own right heirs and next-of-kin according to the nature of the said property" without any reference to intestacy or the Statute of Distributions. The several tenants for life were restricted from alienating their life interests. *Held*, that the class to take must be ascertained at the death of the testator, and not at the period of distribution.—*Patten v. Sparks*, 72 L.T. 5.
- (ii.) **C. A.—Construction—Mortmain—Mortmain Acts, 1888, s. 4; 1891, s. 5.**—Decision of Ch. D. (see Vol. 20, p. 60, vi.) affirmed.—*Forbes v. Hume*, L.R. [1895] 1 Ch. 422; 64 L.J. Ch. 267; 72 L.T. 68; 43 W.R. 291.
- (iii.) **C. A.—Construction—General Restraint of Marriage.**—A testator bequeathed a fund upon trust for his daughter for life for her separate use, remainder in trust for her children, with a gift over in default of children. By a codicil he declared that his will was that the daughter should not marry; and directed that, in case of her marriage or death, the fund should be held upon trust for the persons mentioned in the gift over. It was held, in 1843, that the limitation over contained in the codicil was void as regarded the life interest, being in general restraint of marriage. On the daughter's death leaving issue, *held*, that the will and codicil must be read together, that the construction was that the fund should go over on death or marriage, which should first happen, and that as it could not go over on marriage the daughter's children were entitled.—*Morley v. Kennoldson*, L.R. [1895] 1 Ch. 449.
- (iv.) **Ch. D.—Construction—Precatory Trust.**—A gift purporting to vest property in a legatee absolutely and for his own benefit is not confined to a life interest or made subject to a precatory trust merely by an expression of the testator's wish that the legatee shall, by will or otherwise, make a disposition in favour of others which could equally be effected by the legatee by virtue of his beneficial ownership.—*Trench v. Hamilton*, L.R. [1895] 1 Ch. 373; 72 L.T. 88.
- (v.) **P. C.—Construction—Trust by Reference—Multiplication of Charges.**—Testator gave his whole estate upon trust: (1) to pay the income of £20,000 to his wife so long as she remained his widow; (2) after her second marriage to pay her the income of £10,000 for life; (3) after her death to pay the income of £20,000 for the benefit of his children; (4) in case of her marrying again to apply the income of the balance of the £20,000 upon the last mentioned trusts; (5) subject to the said trusts to pay to each child attaining twenty-one half of the capital sum therein bequeathed in trust; (6) out of the residue to pay his brother £10,000; (7) the ultimate residue to be held upon the trusts declared of the £20,000. *Held*, that on remarriage the widow was not entitled to any interest in the ultimate residue.—*Trew v. Perpetual Trustee Co.*, 72 L.T. 241.
- (vi.) **Ch. D.—Satisfaction.**—A legacy of £400, no time of payment being fixed, *held*, not to be a satisfaction of a debt of £300 payable to the legatee by the testator within three months after his death.—*Calham v. Smith*, L.R. [1895] 1 Ch. 516; 72 L.T. 223; 43 W.R. 410.
- (vii.) **P. D.—Probate—Document—Incorporation of.**—A testator devised property to trustees to provide an annuity of £3,000 for his wife, setting apart certain funds which they would find "noted" by him. After his death a document was found in his handwriting, purporting to be instructions to his executors, and containing the words, "the stocks to be set apart to pay my wife the £3,000 per annum," followed by a list of securities. The earliest date which could be attributed to the document was after the will, but before two codicils which confirmed the will. *Held*, that as the language of the will did not refer to

the document as existing, the codicils had not the effect of incorporating it with the documents entitled to probate.—*Durham v. Northern*, L.R. [1895] P. 66.

- (i.) **P. D.—Probate—Executor—Substitutionary Appointment.**—Testatrix appointed as executors O., T. and S., and if either of them should decline to act she appointed "in their place" B. or F. S. renounced probate and F. could not be heard of. Probate was granted to O., T. and B.—*In the goods of Bradford*, 72 L.T. 267.
- (ii.) **P. D.—Probate—Foreign Will—English Assets.**—A domiciled German died in Germany, leaving a German will. The German Court appointed executors, who applied for probate in respect of the English assets of the deceased. Probate granted accordingly (see Vol. 20, p. 29, vi.).—*In the goods of Brisseemann*, 72 L.T. 268.
- (iii.) **P. D.—Probate—Execution—Position of.**—Testatrix obtained a printed form of will, and filled in her name and a description of property as "money, furniture, house linen, wearing apparel, and jewellery," which she bequeathed to her "sisters and friends." The execution was at the foot of the will. On the second and third pages there appeared a list of specific bequests in the handwriting of the testatrix to persons, some of whom were her sisters and others her friends. *Held*, that only the first page was entitled to probate.—*Royle v. Harris*, 43 W.R. 352.
- (iv.) **P. D.—Probate—Res inter Alios Acta.**—A person who is not a party to probate proceedings in which the validity of a will is questioned, is not bound by the result unless he was cognizant of the proceedings and was entitled to intervene. A person who was cognizant of, and had assisted the plaintiff in, a probate action, but was not aware that he was interested, and, therefore, not entitled to intervene, *held*, not bound by the result of the action.—*Young v. Holloway*, L.R. [1895] P. 87; 72 L.T. 118.

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# THE LAW MAGAZINE AND REVIEW.

No. CCXCVIII.—NOVEMBER, 1895.

## Obiter Dicta.

THE 24th October was signalised in the usual manner by the re-assembling of Her Majesty's Judges at the Royal Courts of Justice, initiating the new Michaelmas Sittings. The Lord Chancellor (Lord Halsbury) led the procession, consisting of the Lord Chief Justice (Lord Russell, of Killowen), the Master of the Rolls (Lord Esher), Lords Justices Lopes, Kay, A. L. Smith, Rigby, Sir Francis Jeune (President of the Probate, Divorce and Admiralty Division), Mr. Baron Pollock, Justices Hawkins, Mathew, Cave, North, Grantham, Sterling, Kekewich, Lawrance, Romer, Wright, Collins and Kennedy, the Attorney-General (Sir R. Webster, Q.C.), the Solicitor-General (Sir R. Finlay, Q.C.) and Sir Edward Clarke.

Public opinion appears to favour a decided curtailment of the Long Vacation. • What between the closing of the forensic temple of Janus for so long a period every year, the administration of the inchoate Judicature Act, and the contradictory and multifarious Rules of Court, the spirit of litigation and the rendering of public justice is being well nigh quenched out of the land.

In the old days Hilary Term began on the 23rd January and ended the 12th February; Easter Term began the Wednesday fortnight after Easter Sunday and ended the

Monday next after Ascension Day ; Trinity Term began the Friday next after Trinity Sunday and ended the Wednesday fortnight after ; Michaelmas Term began the 9th October and ended the 28th November.

Two members of the Bar have just been raised to the Peerage. Mr. Plunket, who was called to the Irish Bar in 1862, and was Solicitor-General for Ireland from 1875 to 1877 ; also Baron Henry de Worms, who was called to the Bar by the Honourable Society of the Inner Temple in 1863.

The new Lord Mayor, Alderman and Colonel Sir Walter Wilkin, is an honorary member of the legal profession, having been called to the Bar by the Honourable Society of the Middle Temple in 1875.

The annual provincial meeting of the Incorporated Law Society was held at Liverpool on October 8th, 9th, 10th, and 11th, where several interesting Papers on legal subjects were read.

Sir Edward Clarke, speaking at a banquet given by the Cutlers' Company, emphatically challenged the statement of the President of the Incorporated Law Society that, although members of the Bar accepted large fees, they did not always discharge the duties for which they had been paid. He might have added, with truth, that members of the Bar do not always receive fees for important services which they have rendered.

The Commissioner of Police of Scotland Yard, has committed a grave error by refusing to licence for public use certain omnibuses which contravene an order of March 10th, 1871, by the late Lord Aberdare, then Home

Secretary, that "no printed or written bill shall be affixed against the windows of any stage carriage." In the first place this order was *ultra vires*. Secondly, the Commissioner of Police has tried to support an illegal order by dictatorial means. The right course it is obvious would have been for him to have proceeded for penalties against the omnibus proprietor for non-conformance with the above illegal order. This, of course, he feared to do. It now remains for Parliament to clip his wings.

It is time that some statutory enactment should intervene to protect the public against a biased magistrate. The action of Mr. Newton, in the matter of Professor Ray-Lankester, at the Marlborough Street police-court, is open to severe criticism. There should be an easy method of appeal, from all decisions of magistrates, irrespective of the amount of punishment which they may mete out. A decision of a single individual should always be open to review.

Mr. Gibson Bowles suggests the formation of a Defence Association of property holders against the extortionate exactions of the Inland Revenue Department under Sir W. Vernon Harcourt's disgraceful Finance Act. The great difficulty in the way of forming such an Association is that no great mass of men are affected simultaneously by the Death Duties. The most desirable solution is the repeal of this most obnoxious Act. Candidates for Parliament will be questioned as to their views on this subject.

The rates of the Metropolis are becoming more and more excessive. The voice of the mourner is heard from St. Mary Abbott's, Kensington, and re-echoed by the inhabitants of Lewisham. The School Board and the



London County Council are the chief offenders. It is not realised that the Police rate, the School Board rate, the London County Council rate, and the Equalization charge of the Metropolis are burdens imposed by independent authorities, which the vestry of each parish is compelled to meet. This the vestry does by raising the money to be expended by those authorities, as well as the slender contributions required for local purposes.

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This is well shown by a return lately issued by the parish of St. Marylebone, in which they show that whilst the monies necessary for parish requirements (Vestry, Guardians of the Poor, Baths, Washhouses and Burial Board) in 1875 amounted to 2s. 11d. in the £, the monies required for the same purposes in 1895 amount to less, viz., 2s. 10½d.; whilst on the other hand the rates raised by the Vestry for the independent authorities only amounted, in 1875, to 16d. in the £, the claim made in 1895 by the independent authorities amounts to 2s. 11½d. in the £. It is clear that the fault lies with the independent authorities, the School Board and the London County Council, as we have above stated.

The Sylvan Debating Club has removed from Lords to St. James's Hall, Piccadilly, and its change of *venue* has been followed by a large influx of new members, principally hailing from the Temple. Mr. Alfred Harmsworth, the great journalist, has been appointed its new Treasurer. Sir Sherston Baker, Bart., and Mr. Robert Manuel continue to be its President and Vice-President respectively.

On King's Hill at Rochford in Essex, on every Wednesday morning next after Michaelmas Day, a Court, vulgarly called "The Lawless Court," was held at cock-crow. They whispered together, had no candles, no pen and ink, but a

coal instead; he that owed suit and service there, and appeared not, forfeited double his rent for every hour that he was absent. This servile attendance was imposed on the tenants for conspiring at a like unseasonable time to raise a commotion. The Court belongs to the Honour of Raleigh, and is called "Lawless" because held at a lawless hour, or *quia dicta sine lege*.

## I.—THE HISTORY OF ENGLISH LAW, BEFORE THE TIME OF EDWARD I.

WE have little doubt that a treatise purporting to be "the history of English Law before the time of Edward I.,"\* would justly be held to have satisfied the promise of its title if it had commenced with the reign of King Henry II., inasmuch as there is a remarkable concurrence of opinion amongst the most eminent Englishmen of letters, who have treated of the Constitutional History of England from very different points of view, that a Common Law cannot be considered to have been established in England before the reign of King Henry II., that monarch having been the first who succeeded in abolishing the Mercian, the Danish, and the West Saxon customs. The authors, however, of the present work have dealt more generously with their readers, and they have divided their treatise into two books, the first book containing what they have been pleased to term "Sketches of early English History," while the second book is entitled "Doctrines of English Law in the early Middle Ages." We propose on

\* *The History of English Law before the time of Edward I.*, by Sir Frederick Pollock, Bart., M.A., LL.D., Corpus Professor of Jurisprudence in the University of Oxford, and Frederic William Maitland, LL.D., Downing Professor of the Laws of England in the University of Cambridge. 2 vols. Cambridge: at the University Press, 1895.

the present occasion to deal only with the "Sketches," which might have reasonably been entitled an introduction to the doctrines, systematically discussed in the second book, but the authors have deviated from the received practice of astute bookmakers, who are accustomed to insert in a so-called introduction certain matters which may interest their more learned readers, but which the majority will regard as so much husk to be reserved for a future day, whilst they proceed at once to feast on what they conceived to be the kernel of the work. The authors, however, of the present work have not left this class of readers without the consolation of a short introduction, the chief object of which is to make known the opinion of the authors, that the Law, which prevailed in England before the coming of the Normans, was pure Germanic Law, and that the supposed proofs of a Celtic element in that Law are either mere coincidences or may well go back to a common stock of Aryan tradition, antecedent to the distinction of race and of tongue between the German and the Celt.

The entire text of this short introduction is well worthy of perusal on the part of the student, inasmuch as the authors explain why they have regarded, as beyond the scope of their work, the subject of Constitutional Law, and they have frankly avowed their reasons in the following words: "They have no wish to say over again what the Bishop of Oxford has admirably said, and no hope of being able to say with any truth what he has left unsaid." They have further explained why they have left on one side the present sphere of Ecclesiastical Law, although they admit that they have made, from time to time, incursions into what was once the sphere of that Law, and they conclude their succinct introduction with an apology for their scant treatment of Criminal Law, as Sir James Stephen has laboured so ably and so recently in that field.

Having premised so much, the authors commence their "Sketches" by introducing their readers to a very complete, although limited, survey of Anglo-Saxon Law; and here we must indulge ourselves with an explanatory word to our own readers. The authors state, in a brief Preface, that the greater share of the execution of the work is due to Professor Maitland. We shall therefore, in the following pages, speak of "the Professor" instead of "the Authors," not intending thereby to deprive Sir Frederick Pollock of the credit of having jointly transplanted from German gardens many flowers which adorn the pages of the first book, but simply because the numerous learned notes are suggestive that those flowers were culled by one and the same hand, under the discriminating judgment of one and the same mind.

The Professor accordingly commences his survey of Anglo-Saxon Law with the observation that it is involved in great obscurity, not so much from lack of materials, as for want of any sure clue to the right interpretation of those materials, as it would be a barren task to apply the refined classification of modern systems to the Dooms of the Anglo-Saxon Kings, and the latest of the Anglo-Saxon Costumals are open to grave suspicion, not merely of an antiquary's pedantic exaggeration, but of deliberate copying from other Germanic Law-Texts. The Professor has no hesitation in avowing at once that his opinion is more or less widely divergent on several matters from the views advanced by J. M. Kemble in his *Codex Diplomaticus Ævi Saxonici*, from whom, however, he always differs with regret; but he considers him to have been frequently carried away by an exalted conception of primitive Germanic freedom. He observes that "Kemble's work often requires correction, but if Kemble's work had not been, there would have been nothing to correct." He further remarks that Kemble's great achievement was to make the way plain

to the appreciation and use of the Charters and Land Books, which record the munificence of Anglo-Saxon princes to religious houses and to their own followers, and likewise to call attention to Anglo-Saxon wills, which although few in number, are of capital importance in fixing and illustrating certain points. The Professor passes over many peculiarities of Anglo-Saxon Law as of little interest in the days of Glanville and of Bracton, and of no interest at all to Englishmen in the present day. He takes care, however, to notice in the Anglo-Saxon polity preserved down to the Norman conquest, several traces of a time when the family and the kindred, and not the individual, was the Unit of the Commonweal, controlling its members in many ways, and answering for them in matters both of public and of private life. Such a stage of society, he remarks, is not confined to any one region, or to any one race of men, but is still found in the present day as an integral part of Hindu and of South Slavonian life, and when it puts on the face of strife between hostile kindreds, it is shown in the way of tribal factions, and more especially in the blood-feud. A man's kindred are his avengers, and it is their right and honour to avenge him, and it is their duty to make amends for his misdeeds, and to maintain his cause in fight.

The Professor adds that the legal importance of the kindred in such matters appears to have been still recognised in the latest Anglo-Saxon Customal, and it is probable that a person could abjure his kindred, and that the abjuration of kindred entailed a renunciation of all future right of inheritance. It is not, however, known for certain whether this was a common practice, or whether any symbolic ceremonies, like those of the Salic Law, were ever required in England in such matters.

He further observes that the absence of trial by battle from Anglo-Saxon procedure can best be explained by the persistence of extra-judicial fighting. We hesitate, how-

ever, to follow the Professor's guidance on this point.) The Lombards introduced trial by battle into Italy from their animosity to the clergy of the Latin Church. The Lombards were not Germans. They came originally from the northern bank of the Danube, and were, in their original home, Iconoclasts, and as such, when they came into Italy, they recoiled from the Ordeal by Fire which was under the control of the Latin clergy, who were of a different religious school. The Lombards have the credit of having devised the judicial combat as the best test of the truthfulness of witnesses, whilst the Anglo-Saxons abominated it. The Professor passes by the question how, in spite of the antipathy of the Anglo-Saxons to the judicial combat, it made headway throughout Europe under the feudal system, and how it came to be an institution of English Law, and, we may add, how it continued to be such an institution as late as the early part of the present century, when it was formally abolished by a Statute of the Realm (59 Geo. III., c. 46).

The Professor's treatment of Norman Law, which occupies the Second Chapter of the First Book, will probably be found to be of more interest to the general reader than the preceding chapter on Anglo-Saxon Law. In fact the Professor's treatment of the Law of England before the coming of the Normans may possibly be thought by some of his readers to be open to a remark analogous to that which he has himself made upon J. M. Kemble's *Codex Diplomaticus Ævi Saxonici*, and whilst he has been carried away on the one hand by an exalted conception of the legislation of Canute the Dane, he may on the other hand have been fascinated by the analogies, which he has himself discovered in early German Law, or which the profound researches of German antiquaries have made known to us in the present century. The student, therefore, must not be surprised that the Professor has put aside the question

whether the Law of the Normans, after their settlement in Neustria, was mainly Frankish or mainly Scandinavian, as he commences with the assumption that at least for half a century before the battle of Hastings the Normans were Frenchmen, and the law of Normandy was mainly French. He explains this afterwards by saying that in describing the Law of Normandy to have been mainly French, he means to say that it was Feudal. The word Feudal, however, displeases him, as he considers it to draw attention only to the prevalence of dependent and derivative land-tenure. Further, he observes that the use of the term "feudal" during many centuries has been so vague that the historian may say, with equal truth, that William of Normandy introduced feudalism into England, or that he saved England from feudalism. He summarises his objection to the term "feudal" by observing that the history of feudal law is the history of changes, which leave unchanged little that is of real importance. He does not, however, allow the reader to remain dazed, as it were, by any new light cast by him on feudalism, but he notes a few interesting traits of the feudal system. He is desirous, however, to avoid saying anything that may have been said elsewhere. Nevertheless, students of the feudal system will find in the text and in the valuable notes appended to the text, sparks of light cast from time to time upon dark spots in the histories, with which they may have been hitherto familiar.

The Professor observes that on the eve of the conquest of England the Anglo-Saxon *Alodium* and the Roman *beneficium* were meeting in the *feodum*. It is plain, he says, that a new scheme of dependent proprietary right was being fashioned at that time in Normandy, into which scheme every acre of a conquered kingdom might easily and naturally be brought. That system embraced amongst its subjects "justice and office." It is plain that the right of doing justice and receiving the profits thereof had

become a heritable right in Normandy at the time when the conquest of England was approaching, and the Normans brought that right over with them when they crossed the sea to conquer England, and found the ordinary procedure of the Courts much the same as in Normandy, since in neither country had men passed the stage, at which they look to the supernatural for proof of doubtful facts. We may be more certain, however, that Norman Law had at that time outstripped English Law along what must seem to us to be a destined path of progress. England after the Conquest came in sight of an ecclesiastical jurisprudence of conflicts and compacts between Church and State, while within our Island Church and State had hitherto appeared but as two phases of one organisation, in which view the Professor is confirmed by Bishop Stubbs, who writes thus of the English Church in the Præ-Norman period, "The unity of the Church in England was the pattern of the unity of the State; the cohesion of the Church was for ages the substitute of the cohesion which the divided nation was unable otherwise to realise."

The Normans had no written Law to bring with them, and the Professor observes that we may safely acquit them of much that could be called Jurisprudence, but the Norman William, after the Conquest, invited to his assistance a jurist of Pavia, a consummate pleader, who had previously done him good service in his Duchy of Normandy, and who had become famous as the Prior of the Monastery of Bec-Hellouin, where he had taught Law and educated, as it were, the Normans for their great exploit of subduing England. The Professor concludes his Second Chapter with a brief sketch of the character and attainments of this remarkable man (Lanfranc), who became Archbishop of Canterbury and the King's Chief Minister, and to whom may be attributed, what is stated in a note, to have been the representation of Sir F. Palgrave in his *History of*



*Normandy*, namely, that traces of an Italian element are discoverable in the English Law of the twelfth century, and that we are indebted to Lanfranc's direction and inspection for the caligraphy of Domesday Book.

The next following chapter treats of England under the Norman Kings. Professor Maitland holds that the effect of the Norman Conquest on England was very slight. No Norman code was transplantable, whilst a good deal of English Law existed in writing, but the Conquest stamped an indelible mark upon our Law; it introduced French terms into it, and it feudalised our Land-Laws as regards their terminology, and very few of the legal transactions of English agricultural life continued to be described by English verbs.

It was, however, in our Courts of Justice that the French language will be found to have exercised the greatest influence. For instance, inside the Courts of Justice every person, and every thing, with the exception of the witnesses, the writs and the oaths have French names, whilst in the sphere of justice and police outside the Courts we must go as far as the gallows, if we would find an English institution. *Right* and *Wrong*, however, have been kept as terms of Law, and although *tort* has been received, *droit* has been rejected, and even the term Law probably owes its salvation to its remote cousin the French *loi*. The Professor, however, does not overlook the fact, that there was a powerful rival against the French language in the field of legal affairs. In England, for some time after the Conquest, *Latin* at first became the written language of the Law, as it was a language understood and written by the learned men of both races. It was the language of such legal documents as the Normans knew, and although it was not the language of the English Doms or of the English Courts, still it was the language of the English Charters and Land-Books. In the second place English had long been a

written language, and a written language which could be used for legal and governmental purposes, whilst French was, as yet, hardly better than a vulgar dialect of Latin, and thus the two languages which King William used for his Laws, his Charters, and his Writs, were Latin and English. The Professor adds a note that the well-known passage about the English and French languages in the would-be Ingolf's *History of Crowland* (*Scriptores post Bedam*, p. 512b), is one of that forger's clumsiest falsehoods.

The Professor admits that during the following century Latin kept its pre-eminence, and that under Henry II. and his sons Latin became the language of our voluminous and official Records, and was not dislodged from this position until 1731 when it gave place to English. Notwithstanding, however, that English had at that time successfully asserted its claim to be the language of the Statute Book, French continued to be the language of the Privy Seal, whilst Latin remained the language of the Great Seal.

The early destiny, however, of our legal language was not irrevocably determined until Henry of Anjou was king, and the Professor considers the fatal moment of that determination to have been the year 1166, as being, in his opinion, the year of the Assise of Novel Disseisin. Then indeed he says that a decree went forth which gave to every man dispossessed of his freehold a remedy to be sought in a Royal Court, that is, in a French-speaking Court. We incline, however, to think that the Professor has antedated in this passage the earliest issue of the important Assise of Novel Disseisin, as no article on that subject is to be found in the text of the Assise of Clarendon, which is the only important Assise of 1166 that has come down to our time, and is the only Assise of that year that is printed in the volume of *Select Charters*, to which the

Professor often appeals as trustworthy; whereas in the subsequent Assise of Northampton (A.D. 1176) which is printed in the same volume of *Select Charters*, there is an Article (No. 5) of the required tenor. "*Item justitiæ domini Regis faciant fieri recognitionem de disseisinis factis super assisam a tempore quo dominus Rex venit in Angliam proximo post pacem factam inter ipsum et regem filium suum.*" The subject matter of this article is conclusive that it is not the repetition of an article drawn up in the year 1166, inasmuch as King Henry's son had not been crowned King at that time. It is true that there is prefixed to the text of the Assise of Northampton (A.D. 1176), as printed amongst the *Select Charters*, certain words: "*Hæ sunt Assisæ factæ apud Clarendune et postea recordatæ apud Northamptoniam,*" and the Professor may have attached weight to this prefix to the text of the Assise in the *Select Charters*, but this prefix is, in fact, a portion of the text of the Chronicle of Benedictus Abbas (of Peterborough), from which the compiler of the *Select Charters* has extracted the text of the Assise of Northampton. Our reader may possibly think this criticism to be of little or no importance, but we consider that a great future is in store for *The Cambridge History of English Law*, and that it will be appealed to frequently by students as a work of authority, so that if there be any error in the Professor's view of the time at which the recognition of Novel Disseisin was introduced, it may be set right, and honour be given to whom honour is due.\* The Professor, however, has further stated his reasons for saying what has hitherto been left unsaid by others, and we

\* If the recognition of Novel Disseisin was introduced in 1166 then Richard de Luci, who was great justiciar, may claim the credit of its introduction. We suppose it, on the contrary, to have been introduced in about the same year in which the Grand Assize was introduced, and that Ranulf de Granville was its author, and left special instructions respecting the procedure in the thirteenth book of his Manual for the King's Justices (*Liber Curialis*).

shall invite our readers to consider those reasons in their proper place in the next chapter.

The Professor, in this chapter, has digressed far away from the days of the Norman Conquest, and avows his suspicion that if the villagers in the thirteenth century did not use French when they assailed each other in the village Courts, their pleaders used it for them, and in this view we may add that he is confirmed by a note in Professor Wenck's edition of *Magister Vacarius Primus Juris Romani in Anglia Professor*, p. 138, which we cite in the Professor's support. That note cites a gloss on the digest *De juris et facti ignorantia*, from which an argument may be derived, "*contra eum qui cum ibi litigat, ubi est copia advocatorum, petit ut advocatus adversarii sui Gallicâ aut Anglicâ lingua alleget (argumenta sua), quasi ipse, cum laicus sit, Latinam linguam non intelligat.*" The remaining matters of the chapter of *England under the Norman Kings*, expanded by the digression into the days of Henry of Anjou, is very interesting, for the Professor does not fail to notice the precaution which the Norman King William had taken to preserve certain features of the old English Law, for instance, he decreed that all men were to have and to hold the Law of King Edward, with certain additions, however, which he had made to it. The Professor admits with perfect justice that King William was not a great legislator, and that he rather favoured the scheme of the Normans retaining the Norman Law, leaving English Law to the English, but adds that the period was too late for a system of personal, that is, of racial laws. Both in France and in England Law was becoming territorial, and a King of the English, who was Duke of the Normans, was interested in obliterating the distinction which stood in his way, if he was to be King of England.

We pass by the rest of this chapter without comment, for it travels beyond the period of William the Norman,

but it well deserves perusal, for the Professor notices several Law-treatises, amongst others a treatise known as *Liber Quadripartitus*, the greater portion of which work is lost, but what remains is a laborious, but not very successful, translation of the old Doms, and as closely connected with the *Quadripartitus*, he invites the reader's attention to a far more important work, the so-called *Leges Henrici*, which seems to have been compiled shortly before the year 1118. He considers the compiler of these latter *Leges* to be a champion of West Saxon, or rather, of Wessex Law; he then mentions what he considers may be appropriately termed the bilingual Law of King William, in which the Latin text is evidently a translation of the French text, both of which texts he holds to be private work. The last treatise which he mentions is a book written in Latin, which passes under the title of *Leges Edwardi Confessoris*, and which purports to contain the Law as stated to the Conqueror in the fourth year of his reign by juries representing the various parts of England. This book he condemns as a private work of a bad and untrustworthy kind, inasmuch as, to use the Professor's words, it has something about it of the political pamphlet, and was evidently written in the interest of the Church. The writer of it hates the Danes of the past, and hates the Dane Law, and according to him, King William was on the point of imposing the Dane Law upon the whole country, when he was induced by the suppliant jurors to confirm the Law of Edward. The so-called Law of Edward was really the Law of Edgar, but from Edgar's death until the accession of the Confessor, Law had slumbered in England. The writer of this work, he adds, strives to blacken the character of King Canute, the great Law-giver. Unfortunately, the Professor goes on to say, the patriotic and ecclesiastical learnings of the book made it the most popular of all the old Law-books; it was vener-

able in the thirteenth century, and even Bracton quoted from it. In spite, however, of this tribute of contemporary approval, the Professor puts his foot down heavily upon this work, and is led by Dr. Liebermann, of Halle, who published in 1892 *Einleitung in den Dialogus de Scaccario*, pp. 72—7, to regard its author as a person who had borrowed his materials from the library of some Cathedral, perhaps that of Coventry. The Professor concludes the third chapter of the first book with a short notice of the Curia Regis, which, under the two Williams, seems to have been the name borne by those great assemblages which collected three times a year round the King, when he wore his crown on the great festivals of the Church. It was in such assemblages that the King's Justice was done under his own eye, but under Henry I. something like a permanent tribunal of justice becomes apparent, over which a Chief Justiciar presided. Twice a year a group of justices, taking the name of the Exchequer, sat around a chequered table, and audited the accounts of the sheriffs, and did incidental justice, whilst some of its members were sent from time to time through the counties to hear the pleas of the Crown, which were very elastic; and there were able clerks amongst them, who, having had long experience as financiers, must have known in addition a little of the new canonical jurisprudence. Notwithstanding all this, when Henry I. died little had been done towards a complete centralisation of the work of justice, and in the woful days of Stephen, when a quarrel arose between the King and the Officers of the Exchequer, the fortune of English Law assumed a very uncertain look, and the more so when a Prince (Henry II.) succeeded to the throne, who was disposed to treat England as the buttress of a great Continental Empire.

With the accession of Henry II. the Professor enters upon a fourth chapter, which is headed "Roman and Canon

“Law.” We cannot, however, take our leave of the chapter entitled “England under the Norman Kings,” without recording our opinion that it is a very complete account of that obscure period of English history, and that it is skilfully lighted up with numerous side-lights from German sources.

The next chapter is on a subject of more widely extended interest, and is entitled “Roman and Canon Law.” Of all the centuries the Professor holds the twelfth to be the most legal, and he commences with discrediting, for what reason he does not say, the Breviarium of Alaric, which he states correctly to have been compiled A.D. 506 for the Roman subjects of the Visigothic Kingdom. He adds that it furnished in the following centuries materials for small manuals of practice, and thereby established a current Roman Law, that had almost ceased to be Roman. A great change, however, dawned upon Europe in the first years of the twelfth century, when Irnerius began to teach the Digest of Justinian at Bologna. A powerful school very soon formed itself around his successors, and the Professor is justified in saying that students flocked to Bologna from every corner of Western Europe, as if a new Gospel had been revealed. Another Law was at the same time coming into being, and it soon asserted its right to stand by the side of the Civil Law, as a second great body of Jurisprudence. The Civil Law might be the law of earth *jus soli*, here was the law of heaven, *jus poli*, and the Professor proceeds to trace in slight outline the growth of a stately body of Law from the end of the fifth century, when the first stone of the edifice was laid by a collection of conciliar resolutions and papal letters brought together by Dionysius Exiguus (Denis le petit), a monk of Rome. It circulated widely and was from time to time enlarged and revised, and the Professor adds that some version of this work it probably was that Archbishop

Theodore, of Canterbury, produced at the Council of Hertford in 673.\*

The Professor, however, has neglected to mention a collection† compiled for the Spanish Church, about the same time by Isidore, Bishop of Seville, the mention of which deserves a place in history, as it serves to explain why a clever Forger, who published in the ninth century a collection of Canons and Decretal Letters, which are now known as *The False Decretals*, adopted the name of Isidore Mercator. The Professor gives but a meagre account of this famous Forgery, and briefly states that its author called himself Isidore Mercator, and that many guesses have been made at his real name and home, but nothing more seems to be known about him than that he did his work in Gaul about the middle of the ninth century. It would have been well if the Professor, having broached the subject of *The False Decretals*, had stated that it was at one time thought extremely probable that Benedictus Levita, a Deacon of Mayence, who, by order of Otgar, Archbishop of Mayence, compiled the three last books of the *Capitularies of the French Kings*, which are ordinarily added to those of Ansegis, was the author of the Forgery, but this opinion, which has a certain plausibility, does not solve all the difficulties, and it has been for some time abandoned in

\* This is rather a bold conjecture, as all that Archbishop Theodore says :

"*Quibus (Ep.) statim protuli eundem librum canonum, et ex eodem libro decem capitula, quæ per loca notaveram.*" This could not well have been the large collection of Dionysius, and it was hardly possible that between 630 and 673 that work could have gained so general a reception. It is the better opinion that Theodore made the *Codex Canonum Ecclesie Universe* the basis of his reformatory work, grafting upon it such of the canons of the British Church as had been already received.

† Blaschi in his *Treatise de Collect. Canonum Isidori Mercatoris* (Neap. 1760) speaks of a collection of Canons attributed to Isidore of Seville, drawn up at the beginning of the seventh century, and of which MSS., according to Cardinal D'Aguirre (*Concil. Hisp.*, Tom. 1, p. 85) were to be found in various Spanish Libraries.



favour of an opinion that *The False Decretals* were the work of more than one person. Benedictus Levita quotes them in the *Capitularies*, which fact the Professor leaves unnoticed, but he informs us that a change has recently taken place in the opinion of learned men, and, whereas, it was formerly thought that the main object of the Forgery was to strengthen the Supremacy of the Roman See, it is now a prevalent opinion that the main design of the forgers was not that of exalting the See of Rome but that of asserting the rights of Bishops (1) as against the civil power; (2) as against their metropolitans.

The Professor states this fact in a note, and observes in the text that in the interval between the ninth and twelfth centuries the learning of canons and decretals ceased to be a mere part of theology and began to wear an air of jurisprudence. The names of Regino, of Prum, who wrote early in the tenth; of Burchardus, of Worms, who wrote early in the eleventh; of Ivo, of Chartres, who died early in the twelfth century, stand out among those of the compilers, and we may add these further facts that whilst Burchardus, Bishop of Worms, borrowed support from articles of the Civil Law known to him through the Theodosian Code, Ivo, Bishop of Chartres, improved upon the collection of Burchardus by the use of the Digest and the Code of Justinian. We mention this fact by the way as we pass on under the Professor's guidance to the great work of Gratian, a monk of Bologna, which he completed somewhere between 1149 and 1152 under the modest title of *Concordantia Discordantium Canonum*, which was soon known as the *Decretum Gratiani*. The Professor pronounces this work to be a great Law-book and its author to have been animated with the spirit, not of a theologian, but of a lawyer, and the Professor is without doubt right, seeing that its compilers had in view a scheme to form a school of canonists, who should

bring to bear upon the *Decretum* and on future *Decretals* of the Pope methods analogous to those which the civilians were employing upon the *Digest* and the *Code of Justinian*. The *Decretum Gratiani*, however, never became enacted Law, although Canonists seldom went behind it. It was however authorised as a lecture-book for the Schools of Law at Bologna, and in the middle of the twelfth century the Popes began to issue *Decretals* for the whole of Western Christendom in great abundance, and compilations of these were made from time to time, in which work Englishmen in Italy took part; but these were all superseded by a grand collection, published by Pope Gregory IX., in 1234. The Professor completes his account of the *Corpus Juris Canonici* by a specification of its contents, and adds that by the time the *Extravagants* were added to the collection, Canon Law had seen its best day.

The Professor then proceeds to trace the history of the Canon Law in England and leads us on to the days of Archbishop Theobald, of Canterbury, who invited Vacarius, a learned Lombard lawyer, to England. He is disposed to think that the Archbishop's clerk, Thomas (Becket), who was destined to become Chancellor, Archbishop, and Martyr, and, as the Professor thinks, who may have sat at the feet of Gratian, imported Vacarius into England. We may admit that Thomas Becket may possibly have been a useful intermediary between the Archbishop and Vacarius, but the circumstances of the day support the received tradition that the idea of countermining the influence of King Stephen's brother, Henry, Bishop of Winchester, who had obtained for himself the office of Papal Legate, originated with the Archbishop, and the Professor admits that there are no circumstances in the life of Vacarius which would lead us to suppose that he took part in favour of Becket in his great controversy with the King. On the contrary, we find Vacarius acting as the compurgator

of Becket's rival, Archbishop Roger of York, when his complicity in the murder of St. Thomas had to be disproved.

From Stephen's reign onwards the proofs that Roman and Canon Law are being studied in England became more frequent. The letters of John of Salisbury, Archbishop Theobald's secretary, and one of the foremost scholars of the day, are full of allusions to both Laws. In his *Polycraticus* he has given a sketch of civil procedure, which has drawn high praise from Carl von Savigny. The epistles ascribed to Peter of Blois, Archdeacon of London, are full of juristic conceits. Giraldus Cambrensis laments that literature is being obliterated by law. Abbot Benedict of Peterborough has, in his monastery, the whole *Corpus Juris Civilis* in two volumes, and various canonical textbooks. Thomas Marlborough, Abbot of Evesham, has taught law at Oxford, and, as it would seem, at Exeter, and he has brought with him to his monastery a collection of books, *utriusque juris*. It is plain also that a flourishing study of Roman and Canon Law had grown up at Oxford. The professor continues his notice, which is reasonably until we find the leading Legists and Canonists in England, unexpected to the reign of Richard I., when he does an act of justice in calling the reader's attention to the *Practica Legum et Decretorum* of William de Longchamp, which has been recently rescued from oblivion by Dean Caillemer of Lyons. Longchamp, who had been Chancellor of Richard when Duke of Normandy, followed the Duke's fortune, and was advanced by him when he became King of England to the high station of Justiciar and Chancellor, upon which was piled up the still higher office of Papal Legate. He was thus for a time the real ruler of England, whilst the King was absent in the Holy Land in the Fourth Crusade. The Professor passes over the circumstances which led to the downfall of Longchamp,

and accordingly has omitted to state that the proceedings which led to his deposition, although revolutionary, were attended with certain formalities, which evinced the hold, which legal system had acquired at that time over the Barons. The Professor briefly mentions the names of one or two of our countrymen, amongst others Ricardus Anglicus, who has been identified with Richard Poore, successively Bishop of Chichester, of Salisbury and of Durham, and William of Drogheda, who taught at Oxford and wrote a *Summa Aurea*, and the Professor aptly mentions that the Roman Catholicism—we need no better term, he observes, of the Canon Law—retarded the development of National Schools of Law, as all the great causes, the *causes célèbres*, went to Rome. The remainder of this chapter is interesting and instructive, but it travels beyond the time of Edward I., and the tone is suggestive that the Professor is surveying events too exclusively from a nineteenth century point of view, and that he occasionally dips his pen into ink that is slightly over-caustic. He admits, however, that the English Law, more especially the English Law of civil procedure, was rationalised under the influence of the Canon Law, and he admits that our own Glanville, to whom he dedicates the next chapter, has told us that the exceptions, or, as we should say in more familiar language, the challenges, which can be made against jurors, are the same as can be made against witnesses in the Courts Christian.

The Professor returns in due course further on to the subject of the Assise of Novel Disseisine, and states his reasons, which we must not pass over, for fixing the date of the Assise in the year 1166. "We fix the date," he says, "because the next Pipe Roll, which records the abundant profits reaped by the itinerant justices in the field of criminal law, gives us also our first tidings of men being amerced for Disseisine against the king's Assise; from that moment

'onward we get such tidings year by year." This coincidence is no doubt noteworthy, but it is by no means conclusive, for the Professor appends to this passage a note that there are writs of earlier date, which in many respects resemble the writ of Novel Disseisin, and we may add that it should not be overlooked that the entries in the Pipe Roll to which the Professor alludes, and which commence at 12, Henry II., are simply *pro Disseisina super assisam Regis*. Further, it is reasonable to suppose that the king had issued Assises for the redress of Disseisines frequently before he issued his celebrated Assise of Novel Disseisin. This latter Assise was intended to redress disseisines, which had taken place during the occasional visits of the King to Normandy, and Glanville, as Chief Justiciar, had probably aided the King with his advice in simplifying the procedure in such cases, an account of which is given in the Treatise for the guidance of the King's Justices, which was drawn up under the eye of Glanville and bears his name. We agree with the Professor that this work was completed after the death of Glanville, most probably by Archbishop Hubert Walter, his nephew, who had been his secretary during his lifetime, and succeeded him as Chief Justiciar after his death in the Holy Land.

The Professor, who has prefixed to the next chapter (Chapter V.) the title of "The Age of Glanville," although the chapter conducts the reader beyond that period and introduces him to the Great Charter of King John, discusses the question whether Glanville wrote the book that has long borne his name. This question raises almost as perplexing a problem for students of legal history as the question who compiled *The False Decretals*, to which we have already suggested the answer, that they were probably compiled by more than one hand. A like answer would probably meet the difficulty in the case of the *Tractatus* on procedure, which, as the Professor tells us, was known in

the thirteenth century as *Summa, quæ vocatur Glanville*. There was nothing derogatory to the Great Justiciar in his being supposed to have originated such a work, and the Professor observes that from internal evidence it is clear that it was not completed before the month of November, 1187. Such an inference is what may be called a necessary inference, as there are inserted in the Treatise (eighth book) two Final Concords executed at Westminster in the year 1187, "*Coram Ranulpho de Glanvilla justiciario domini Regis et aliis fidelibus domini Regis*." There is, however, further evidence we may add in the Treatise itself, which alludes to the dispute between King John and his nephew, as to Prince Arthur's preferential right of succession to the Duchy of Normandy, and which warrants the inference that the Treatise was not completed in its present state before the reign of King John. We have spoken above of Glanville's work as a Treatise for the guidance of the King's Justices, for such in fact it became, and for such uses we incline to think that it was designed by its author with the King's approval. Thus we find mention in the Appendix to the Second Report of the Royal Commission on Historical MSS. (1871), of a small folio volume preserved amongst the Hengwrt and Penarth MSS., which contains a text of Glanville's Treatise, thus headed, "*Incipit prologus in librum qui vocatur Curialis, in quo continentur leges Anglice*." The Treatise contained in the above manuscript purports to have been copied from a book entitled *Liber Curialis*, which had the same beginning and the same ending as the print of Glanville's Treatise, namely, the Prologue with certain interpolations in it, which are not found in the earliest MSS. of the *Tractatus*, and the identical Colophon at the end, *Explicitus est Liber Legum Angliæ*, which is found in most of the printed editions. . .

It was not every person in those days who could write a

book, but the King's officers aspired to that task. The Professor has previously mentioned the *Dialogus de Scaccario*, an anonymous work, which is now rightly ascribed to Richard Fitznigel, who was the King's treasurer, and he has observed that such a book, which discloses the minutest detail of the King's Government, is one of the wonderful things of King Henry II.'s wonderful reign, as it exposes to the light of day many things which Kings and Ministers are apt to treat as secrets of State. Here the Professor puts on his nineteenth century spectacles, and judges the motives of Henry II. as if he were a nineteenth century King, but Henry II. was a many-sided man. After his bitter controversy with Archbishop Becket, he trusted no official, and he resolved to obtain in writing from his chief officials a mass of information on matters within their respective departments, so as to render himself independent of oral tradition, if the man at the helm should at any time not know his proper course, or should be disposed to put the helm the wrong way. The King had no mind to be obliged to act as William the Normans' representative had in former days been obliged to act on Pennenden Heath, when he had to send for an aged South Saxon Bishop to declare the ancient custom of the Law. We suggest this view of Henry II.'s character inasmuch as it accords with the King's general conduct and would not have been unworthy of his genius.

The fifth chapter is entitled the "Age of Glanville," but the Professor warns us that Henry II. was rather an organiser and governor than a legislator, and it is to the administrative character of his reforms that we may ascribe our lamentable lack of documentary evidence respecting them, and thus it has come about that many results of his activity have been regarded as part and parcel of the traditional Common Law. The first great legal document to which the Professor invites our attention are the

Constitutions of Clarendon, in which the King called upon his nobles in the year 1164 to declare the Law of the Realm in the matters that were then in debate between the Church and the State. These Constitutions, however, were not drawn up under the advice of Glanville, but under the counsel of Richard de Luci, at that time the King's Justiciar, and Glanville's predecessor, and they were tendered by the King to the Prelates as a Concordat. The Professor omits on this occasion all mention of Richard de Luci's name, but the Justiciar's steadfast conduct in supporting the King against Archbishop Becket earned for him the cognomen of Richard the Loyal. The Professor is more interested in summing up what he considers to be the most permanent and the most fruitful results of Henry II.'s reign, and commences with that, which modern Englishmen will be apt to think the most distinctive, namely, the inquest, the recognition and trial by jury, and he states that in the main he accepts the results attained by Brunner in his *Entstehung der Schwurgerichte*. The Professor holds that the Jury has no place in our old communal Courts, and that the quarter to which we ought to look for the Jury is the Frankish *inquisitio*, the prerogative right of the Frankish Kings, not the ordinary procedure of the Frankish Courts. He considers the Frankish King to have imitated the procedure of the Roman *fiscus*, and to have assumed to himself the privilege of ascertaining and maintaining his own rights by an inquest, and to have granted to others the same procedure which he had adopted in support of his own rights; and all this may be seen in the Frankish empire of the ninth century, in the *Neustria* of the time of the Norman invasion, after which it settled down in deep darkness, so much so, that it may be said, that but for the Conquest of England it would have perished, and have become long ago a matter for the antiquary.



Such, says the Professor, is now the prevailing opinion, and it has triumphed in this country over the natural disinclination of Englishmen to admit that this "palladium of our liberties" is in its origin not English, but Frankish, not popular, but royal. It is certain, that of the inquest of office and of the jury of trial, Anglo-Saxon Dooms give no hint. Certain, that by no slow process of evolution did the Dooms-man or the Oath-helper become a recognitor. The only doubt that there can be is as to the jury of accusation, the jury as an organ of *fama publica*. There seems, however, to be good reasons for believing that some of the Scandinavian nations came by a route of their own to something that was very like a jury. The investigation, however, of this matter is made the more difficult by the comparatively recent date of the Scandinavian Law-Books. No doubt there is here, he says, a wide field for research, but it seems unlikely that any fresh discovery will disturb the derivation of our English inquests from the Frankish inquests. That the Norman Duke brought them with him as one of his prerogatives can hardly be disputed.

The Professor then proceeds to explain the nature of the several Assises mentioned in the Treatise ascribed to Glanville. He considers that King Henry II. conceded to his subjects, as a royal boon, his own prerogative procedure, and that the first class of disputes, submitted as a matter of common practice to a jury, was one in which the claims of the Church came into collision with the claims of the State, and to meet such a case the King granted, in 1164, recourse to a procedure, which in after days was known as an *Assisa utrum*, and in which a recognition of twelve men was to decide whether (*utrum*) the land in question was alms or a lay-fee. Two years later the King instituted, at a Council held at Clarendon (A.D. 1166), which the student must be careful not to confound with the Constitutions of Clarendon (A.D. 1164), a procedure known as the

Assise of Novel Disseisine, which we have already had occasion to discuss, and respecting the date of which Assise we are unable to accept the Professor's view; for at that time Glanville, who deals with this Assise as if it were beyond doubt his own offspring, was not Justiciar. The Professor mentions two other Assises which have a place in the Treatise ascribed to Glanville, namely, the *Assise de morte antecessoris*, by which the Professor holds that another blow was struck at feudal justice, and the *Assise de ultima præsentatione* which stands to the writ of right of advowson in somewhat the same relation in which the Novel Disseisine stands to the writ of right (*de recto*) for land. The Professor classes these four Assises as Petty Assises, and only makes a brief allusion to a more important change made by the King in the institution of a novel procedure in a proprietary action for land, known as a Grand Assise, by which the tenant of land, as defendant in an action, might refuse the wager of battle and have the action removed from the Feudal Court to the King's Court, and the whole question of right determined by the inquest of neighbours. The Professor passes in review the visitation of counties by itinerant justices, the adoption by the King of the accusing jury as part of the ordinary mechanism of justice, and the growing practice of adding to the articles of the Eyre (*capitula itineris*), and he notes the changes which have been worked in the functions of the King's Court, which instead of being a Court reserved for great men and for great causes, for matters that concerned the King, as in earlier times, had become an ordinary tribunal for the whole realm.

No judicial rolls have come down to us from Henry II.'s reign, but during the last years of it such records were being compiled, and for our knowledge of what went on in the Courts we have still to look to annalists and biographers, and they are apt to give us not the ordinary

but the extraordinary, and thereupon the Professor proceeds to narrate two or three extraordinary trials, in which the King presided, surrounded by the prelates and nobles, and whilst the Professor admits that the King was at heart a lawyer, quite competent to criticise the wording of a new Charter, he considers him to have sold in his Courts Justice, but it was a better article than could be had elsewhere. Meanwhile, law and literature grew up together. Roger Hoveden, the Chronicler, and Walter Mape, the Satirist, were among this King's itinerant justices, and the Professor cites the Dialogue on the Exchequer and the Treatise ascribed to Glanville as evidence that Law had now become the subject of literature.

The Professor considers that it is a doubtful question whether Chief Justice Glanville wrote the book that has long borne his name. He observes that the author writes not as a statesman, but as a lawyer, and that whoever he may have been, the author of the Treatise was very familiar with the Justice done in the King's Court during the last years of Henry II., and we may safely say that the Treatise was not written without Glanville's permission or without Henry's.

About the motive, which gave rise to the work ascribed to Glanville, the Professor is silent, and the point of view from which he regards it leads him nowhere, as he treats it as a specimen of a national legal literature, in which England was in advance of both France and Germany, those countries having been content, since the issue of the last of the Carolingian *Capitularies*, to live under Law, which had taken the form of multitudinous local customs. But the Professor does not leave us without a few words on the subject of the Dialogue of the Exchequer, which he suggests was not meant for the general public so much as for the numerous clerks, who were learning their business in the Exchequer. This is, perhaps, a more probable

suggestion than that which we have already made in a previous place, namely, that Henry II. bore in mind the disaster which had befallen King Stephen, when he imprudently arrested all the members of the great family that formed the working staff of the Exchequer. In the absence of the engineer and the chief stokers to control its action, the machine on that occasion stopped work, and Henry II. may have been bent on preventing the recurrence of such a disaster in the case of the Exchequer. If such a conjecture be correct it will throw a further side-light on the object, which the author of the Treatise ascribed to Glanville may have had in view, and we shall not be far wrong if we hold it to have been drawn up as a manual for the King's Justices, like the public *enchiridia* \* introduced into the Eastern empire after the time of Justinian, and that it acquired a place in the Western Europe amongst the *Libri Curiales*. We refrain from giving instances of books under that title, as we have already called the attention of the reader to the existence of a *Liber Curialis*, the contents of which are identical with the Treatise ascribed to Glanville.

We could continue with pleasure our survey with the Professor in his further examination of the Roman and Canon Law to be found in the *Tractatus* of Glanville, many MSS. of which, he says, are extant. We believe that we have personally examined the majority of those MSS., some of which are of much literary interest. He further adds that a French translation of it is found in Houard's *Coutumes Anglo-Normandes*, and a German text in Phillips' *Englische Rechtsgeschichte*, and he somewhat carelessly says, in a tone which John Skene, the Archivist of the King of Scots, would much resent if he were alive, that a version of

\* For an account of these *enchiridia* the reader may consult the prochiron of the Emperors Basilius, Constantine and Leo, by C. B. Zacharice, Ju. M.D., Heidelbergae, 1837.

it, known as *Regiam Majestatem*, became current in Scotland. He has, however, added in a note that the *Regiam Majestatem* is collated with Glanville in Vol. I. of the Acts of the Parliament of Scotland.

The Professor includes, under the "Age of Glanville," the exaction and the grant of the Great Charter of King John, as he considers the Charter to be mainly restorative, and that the reforms of Henry II.'s day were accepted in the so-called Charter, and made the basis for a treaty between the King and the Barons; but the Professor holds that Henry II. would never have acknowledged the claim of the feudal lord to hold a court of exclusive competency in proprietary actions relating to lands held of himself. He regards this provision as a retrogressive step, and further in the most famous provision of the Charter, namely, that every man is entitled to the judgment of his peers, he detects a feudal claim, which could only cease to be dangerous when, in the course of time, men had distorted its meaning. These and other unfavourable criticisms of the Great Charter may have some warrant, but it must be remembered that the Barons at Runimede were the stronger party, that they had clamoured at St. Edmund's for the Charter of Henry I., and that the Great Charter was a compromise, to which King John was an unwilling party, and to which the assent of the Barons was obtained with difficulty through the persuasive counsel of Archbishop Langton, supported by the advice of William, Earl of Pembroke. But after all the Professor admits that the Great Charter, with all its defects, rightly became a sacred text, and was the nearest approach to an "unrepeatable fundamental statute" that England has ever had.

We must pause here lest our readers should experience a sense of fatigue, for the lines of what the Professor has modestly termed sketches, are by no means slight. We have invited the reader's attention, as we have pro-

ceeded, to the leading features of each sketch, as the sketches have a general characteristic, which they share in common with the drawings of a well-known Royal Academician, of which it has been said that the longer you gaze upon them, the more will they please you by the result of the numerous side-lights which the artist has employed. We stop short, however, at the "Age of Bracton," for although the Professor has had the courage to endeavour to compress the legal incidents of that instructive Age into a single chapter, it contains of itself the materials of an independent and complete book.

TRAVERS TWISS.

## II.—BURMESE LAW.

IN Burma the legal system that prevailed prior to the introduction of the Anglo-Indian Law, and which now governs domestic relations, has been termed "Buddhist" Law, and as such it is known at the present day. Though Buddhism, the religion of the people, has influenced the law, there can be no doubt, as Mr. Justice Jardine\* has clearly shewn, that the origin is to be traced to Hindu Law. In the *Jardine Prize Essay*, the late Dr. Forchhammer† traced the origin to Indian sources by a detailed comparison of the Institutes of Manu with the *Wagaru*, a Burmese Dhammathat of the end of the thirteenth century. The Dhammathats or Burmese legal compilations reveal in their terminology and arrangement their Indian influence, but owing to racial differences great divergences have taken place, and at the present time recourse cannot be had to the Hindu Law except for purposes of historical research.

\* Formerly Judicial Commissioner of British Burma.

† He was the Pali-Professor of the Rangoon College.

In a case of considerable importance relating to the joint interests of husband and wife in property acquired after marriage, Mr. Justice Fulton\* remarked: "It seems useless to me in a case like the present to seek for analogies from Hindu Law, for there can be no doubt that Buddhist Law on this subject is now widely divergent. One of its leading principles seems to be the equality of husband and wife in all questions connected with property. No doubt in some matters traces of a less liberal system prevail. The husband, for certain purposes, is still lord of the wife and, where religious offerings are concerned, his supremacy is distinctly recognized. But so far as interest in the property is concerned, the husband and wife seem almost on terms of equality. To have recourse, then, to Hindu Law for the purpose of establishing the husband's power over the joint property would be to endeavour to arrest the progress which has been made in this country towards the emancipation of women by having recourse to a system based on less liberal and wholly inconsistent ideas."†

A prominent feature, therefore, is the position that women occupy in Burma. Socially they are as free as their sisters in Europe, and legally they possess larger rights. The Burmese Law is contained in various Dhammathats—the leading ones being the *Dhammavilasa* (12th century), the *Wagaru* (13th century), the *Manu Kyay* (1756), the *Manu Reng* (1753), the *Thara Shwè Myin* (1771), the *Wonnana* (1772), the *Wini Tsaya Pakathani* (1775), the *Mohavichedani* (1832), and more recently the *Attathankepa* by Kin Wun Mingyi, C.S.I. All those enumerated, except the *Attathankepa*, have been translated in selected portions to meet the present requirements in

\* Formerly Judicial Commissioner of Lower Burma.

† *Ma Thu v. Ma Du*, *Selected Judgments and Rulings of the Court of the Judicial Commissioner and of the Special Court of Lower Burma*, p. 578.

those cases which are determined by Burmese Law.. The *Manu Kyay* is the only Dhammathat completely translated, and has been most frequently consulted in the British Courts, and the *Attathankepa* was considered an authority in Upper Burma before the annexation, and has also been referred to since then. "This book is a compilation or digest of the leading texts on Buddhist Law, and it is believed to have been approved of and commonly accepted as authoritative during the reigns of the last two Burman Sovereigns.\* The main division of the Burmese Law books is into eighteen titles which "is more or less the same as that given in the Hindu Manu," † and is absolutely devoid of any system. The Wagaru gives it—"the law concerning the contracting of debt; the law of giving and taking (in marriage); the law of sale and purchase; the law regarding slaves; the law of inheritance; the law of gambling; the law of assault; the law of theft; the law regarding the hiring of persons; the law dealing with adultery; the law of division of land; the law of purchase of property; the law relating to accusations; the law of deposit of property; the law of mortgage; the law of divorce; the law regarding two-footed and four-footed animals." ‡

The classification seems to be based upon the kind of cases that frequently occurred than upon any logical system. The Austrian theory of sovereignty never dawned upon the Burmese jurists. The jurisprudence of Burma resembled the condition which Sir Henry Maine has described to have been the state of the Punjab under Runjeet Singh. The King was absolute, and in the words of Sir Henry Maine, "he could have commanded anything; the

\* *Ma Sein Nyo v. Ma Kywe*, Circular No. 41, of 1894, of the Judicial Commissioner of Upper Burma.

† *Yardine Princ Essay*, p. 45.

‡ *Ibid.*, pp. 44-45, cf. also *Manu Kyay*, Bk. III., at the beginning.



smallest disobedience to his commands would have been followed by death or mutilation, and this was perfectly well-known to the enormous majority of his subjects. Yet I doubt whether once in all his life he issued a command which Austin would call a law . . . . The rules which regulated the life of his subjects were derived from their immemorial usages, and these rules were administered by domestic tribunals, in families or village communities—that is, in groups no larger or little larger than those to which the application of Austin's principles cannot be effected, on his own admission, without absurdity.”\*

As a rule the Dhammathats do not expound principles, but are fond of giving concrete examples and where they differ it is most perplexing to come to any satisfactory conclusion. But a peculiar feature of the books is the details in which they deal with unimportant subjects. The *Manu Kyay* specifies twelve kinds of securities,† most of the Dhammathats state seven kinds of wives, viz., a wife like a mother, a wife like a sister, a wife like a friend, a wife like a slave, a wife like a master, a wife like an enemy, and a wife like a thief; and the characteristics of these are described fully.

Some extracts shewing the curious rules of ancient Burmese Law may be given as they suggest the state of society, and civilisation achieved by the people. The extracts are from the *Manu Kyay*, translated by Dr. Richardson, as it embodies the decisions of typical cases and reveals the manners and customs of the Burmese of the last century.

In Bk. II., sect. 7, the case of finding a pot of gold is given, and how it should be dealt with: “If anyone find a pot of gold, and shall deny it on being asked by the chief (king), the chief shall have a right to the whole. If he do not deny

\* *Early History of Institutions*, pp. 386-1.

† Bk. III., sect. 56.

or conceal it he shall have one-half. If a slave find a pot of gold, his master has a right to the whole. If children find one, their parents have a right to the whole. If a pupil find one, his teacher has a right to two-thirds.\*

In Bk. II., sect. 20, the law as to the remuneration of pleaders is stated: "Any good pleader, though the statement of his case may not have been taken down, if he has only just sat down, or put up the sleeve of his jacket,\* shall have a right to his pay. There shall be no plea that the case was not vested.

"If the client shall run away, or conceal himself, the pleader shall bear the whole amount of the decree. If he produce, or hand over the client, he is free, and shall have a right to ten per cent. for his pay and security. If a pleader be bad, he must take the consequences . . . . If a pleader shall have gained a cause, he has a right to a percentage. If he lose it, he has a right to a reasonable remuneration. If it be a matter of life or death, or redemption for the same, and the client shall not suffer death, or pay the forfeit, the pleader has a right to a fee of thirty tickals of silver, the price of his client's body."

As Buddhism regards it as a sin to take the life of any living thing, the law did not approve of capital punishment. Bk. V., sect. 1, says: "Oh, King! because it is thus said, that from any man who has killed another with a sword, spear, bow and arrow, or any other instrument, it is proper to demand restitution . . . . it is not proper to put him to death. What is the comparison? It is this:—Any dog that shall have bitten a man's foot, as it is not proper for that man to bite the foot of the dog, it is not proper to put a man who has killed another to death in return; and a king who in this does not put a murderer to death, will be praised by the gods and all good men, and supported and

\* A sign of readiness to contest any dispute.

adhered to by them ; and all evil nats (spirits) who have no respect for the law, shall keep at a distance from them, and the country of such a king shall be called an excellent country, and the inhabitants will be prosperous and happy."

The law of partition and the mode of dividing the inheritance is peculiar. Bk. X., sect. 14, says: "If the father and mother both die, having male and female children, let the eldest son have the clothes and ornaments of the father, and the eldest daughter the clothes and ornaments of the mother ; the residue of the property, animate and inanimate, shall be divided into fifteen shares, and let each one take according to age ; having added them together and divided them three times, let the residue then be divided equally. In this case also, seven divisions have been ordered prior to the equal distribution of the residue. Here also a portion must be set aside for religious offerings."

The punishment for theft resembles that of other ancient systems, but the Burmese Law goes into more detail as to the compensation. Bk. IV., sect. 1, says: "If a theft is committed in the night (restitution shall be made), five-fold ; if in the day, two and a-half shall be restored. In the theft of animate property, if an elephant is stolen, two shall be restored ; if a horse, five ; if a slave, five ; if a buffalo, fifteen ; if an ox, thirty ; if a pig or goat, fifty ; if ducks or fowls, one hundred. . . . As regards inanimate things—gold, silver, gems, iron . . . they shall all be restored five-fold." The section concludes by a characteristic censure of the thief:—"It is the nature of a thief not to work, that he may be dressed and have food like other men ; but, by reason of his indolence, he contrives the appropriation of other men's property to support his existence. Such men are hated and detested by all, from the king downwards. With what may this offence be compared ? With fire, the poison of a serpent, the poison

of an arrow. These are only suffered in this state of existence; but a thief, through all ages, till he obtains *nicban*, suffers the pain for this offence. If *Rahans* or *Bramins* receive offerings of stolen property, they become participators in the theft. For these reasons, that vile, degraded, foolish thieves may not continue to steal, good men should repeatedly warn and instruct them."

The Burmese Law has ceased to apply except in what might be termed domestic relations. By sect. 4 of the Lower Burma Courts Act (1889), Buddhist Law governs only questions regarding succession, inheritance, marriage, and divorce, or of any religious usage or institution. With respect to the general Law the Acts and Regulations of the Governor-General in Council apply as in British India, which includes Burma.

The law of marriage and divorce is simple, being essentially regarded as a contract. It is formed by consent of parties, and may be dissolved in the same manner; an important feature, however, is that the status of marriage also produces a partnership in property acquired since marriage, and the difficulties that arise are as regards the division of the joint property in case of divorce. The books refer to the forfeiture of gifts upon breach of promise to marry, and the Courts have held that an action will lie amongst Burmans if the promise is not fulfilled. Adoption still prevails, but unlike in Hindu Law, no particular ceremony is required, nor are there any special restrictions: "The law requires no ceremony, no written document, nothing but a request from parents, and a notorious and public taking and bringing up, in order that, or with the understanding that they, *i.e.*, the children, may inherit."\* The adopted child has the same rights of inheritance as a natural child, but this right may be forfeited if the adopted child puts an end

\* *Ma Gun v. Ma Gun, Selected Judgments and Rulings*, p. 25.

to the relationship by going away and ceasing to perform those duties towards a parent which might be expected from natural children.

The most intricate part of the law is as to inheritance and partition among heirs. But some of the prominent points have been adjudicated upon. The eldest child has larger rights than the younger children, and upon the death of one of the parents, the eldest son or daughter may claim his or her share of the inheritance, and the remainder vests in the surviving parent for himself or herself and the other children.\* The eldest child's share is one-fourth of the inheritance, preference being given as elsewhere, to the first-born or the eldest, who in his or her turn is enjoined to take care of the younger brothers and sisters.

The Burmese widow has an absolute interest in her own share of the property, as also a life interest in the remainder, which latter may only be alienated in case of necessity. In order to keep ancestral property within the family the law provides that it may not be alienated without the consent of all the heirs, even to the extent of the individual shares, and a right of pre-emption is given to them when it has passed into the hands of third persons if the owners desire to sell.

From the aspect of historical and comparative Jurisprudence the study of Burmese Law is attractive, and under the British Government it has received great attention from the Judicial officers. With the increasing number of young Burmese barristers we may hope that they will add to the legal literature of their country.

CHAN-TOON.

\* *Ma On v. Ko Shive O.*, *Selected Judgments and Rulings*, p. 378

### III.—THE RELATIONS OF THE HOUSES OF PARLIAMENT. •

**I**N this article I propose to consider : 1st, the application made by the Honourable Bernard Coleridge, now second Lord Coleridge, to be entitled to the Stewardship of the Chiltern Hundreds, and the proceedings and resolutions thereon by the House of Commons ; 2ndly, the claim of the Honourable William Waldegrave Palmer, Viscount Wolmer, now second Earl of Selborne, to be entitled to sit and speak, vote and act as a fully qualified member of the House of Commons, after he had succeeded to a British Peerage, and the proceedings and resolutions thereon by the House of Commons ; 3rdly, the Law and Practice of Parliament as to the vacating of seats in the House of Commons, and the Reforms required to be made thereon ; and 4thly, some Reforms required in the Constitution of the House of Lords.

#### *I.—Lord Coleridge's application for the Chiltern Hundreds, and the proceedings and resolutions thereon.*

The facts in connection with an order by the Speaker of the House of Commons for the issuing of a Writ, on the 26th of June, 1894, for the Attercliffe Division of Sheffield, are few, simple, and undisputed.

The Honourable Bernard Coleridge was elected for the Attercliffe Division, at the General Parliamentary Election of 1892, and continued in the House of Commons till the death of his father. He was the eldest son of The Right Honourable John Duke Coleridge, Lord Chief Justice of England, first Baron Coleridge, in the Peerage of Great Britain and Ireland. His father died on the 14th of June, 1894. On the 25th of June, the Right Honourable Sir William Vernon Harcourt, Chancellor of the Exchequer,

received a letter, without any date, from Bernard Coleridge, stating that he desired to apply for the Chiltern Hundreds. In the course of the following day, the appointment asked for was made out in his favour. On the 26th of June a motion was made, in the House of Commons, for a Writ for the election of a representative of the Attercliffe Division of Sheffield, in the place of Bernard Coleridge, who had asked for, and obtained, a grant of the Stewardship of the Chiltern Hundreds. A new Writ was accordingly ordered to be issued for the Attercliffe Division, and there and then, if not before, Bernard Coleridge ceased to be its representative in the House of Commons. As some members of the House of Commons held that Bernard Coleridge ceased to be a member of the House, by his succession to a British Peerage, on the death of his father, and that his appointment to the Chiltern Hundreds was unnecessary to void his seat in the House, a discussion took place, in the House of Commons, on the 28th of June as to the grounds of his appointment to an office which, by the law and practice of Parliament, is ordinarily used for vacating a seat in the House of Commons. Thereafter, on the 6th of July, 1894, a Select Committee was appointed to inquire and report on the circumstances attending the issue of the Writ for the Attercliffe Division; and also to inquire into the Law and Practice of Parliament in reference to the vacating of seats in the House of Commons, and whether it is desirable that any, and if so what, changes should be made therein. The Committee included Mr. Secretary Asquith, Mr. Attorney-General, Mr. ° A. J. Balfour, Mr. Joseph Chamberlain, Mr. George Curzon, Sir Henry James, and Viscount Wolmer, and several other members of the House of Commons. The Committee was empowered to send for persons, papers, and records, and five members were declared to form a quorum. The Committee held meetings on the 10th, 12th, 19th, and 26th

of July, and appointed Mr. Secretary Asquith as their chairman; examined the Chancellor of the Exchequer, Mr. Kenneth Muir Mackenzie, Clerk of the Crown in Chancery, Sir Reginald Palgrave, Clerk of the House of Commons, and Lord Coleridge; and received some important and interesting evidence and information as to the Chiltern Hundreds and the other matters referred to them. On the 9th of August, the Committee resolved to report the Minutes of Evidence, together with a valuable Appendix, and to recommend that the Committee should be re-appointed in the following Session for the purpose of considering their Report. On the same day, the House of Commons ordered the Report, together with the proceedings of the Committee, Minutes of Evidence, and Appendix, to be printed. On the 25th of February, 1895, a Select Committee, consisting almost entirely of the same members as the Committee of 1894, was re-appointed; and on the 18th of March, 1895, the Minutes of Evidence, taken in 1894, were referred to them for the same purposes, and with the same powers as the previous Committee. The new Committee held deliberations on the 19th of March, and the 17th of May, 1895. On the 20th of May the Committee considered a Draft of the first Report proposed by Mr. Secretary Asquith, who had been re-appointed Chairman. A Draft first Report was also proposed by Mr. Curzon, and also a Draft first Report by Mr. Swift McNeill. All these three Draft Reports were read once, and Mr. Curzon's Draft Report was rejected on a motion for its second reading, and Mr. McNeill's Draft Report was never proposed for a second reading. After several amendments on Mr. Secretary Asquith's Draft Report, the Committee agreed to accept it as their Report, and ordered it and an Appendix to be reported to the House of Commons. This Report of the Committee, was, on the 20th of May, 1895, ordered, by the House of Commons, to be printed. Its historical and



constitutional importance will justify its being given *verbatim*. It is in these words :—

“ 1. Your Committee have thought it desirable to present a first and separate Report on the question, how far the succession to a Peerage affects the status of a member of the House of Commons, reserving the other matters referred to them for a further Report. Upon this question they have arrived at the following conclusions :—

“ 2. That the fact of succession to a Peerage of England, or of Great Britain, or of the United Kingdom, disables the person so succeeding from being elected to, or from sitting, or voting, in the House of Commons.

“ 3. That it has been the general practice of the House of Commons to abstain from declaring the seat of a member vacant, and ordering a fresh election in his room, on the ground of succession to a Peerage entitling the holder to sit in the House of Lords, until the member has been ‘called up to the House of Lords,’ by receiving a Writ of Summons from the Crown to sit in that House. The reason for the practice appears to your Committee to be not that the mere fact of succession does not, in itself, disable the member so succeeding, but that the occurrence of that fact, with its disabling consequences, ought not to be assumed, and acted upon, without clear proof; and that the Writ of Summons, in cases in which such a Writ can be issued, is the best and safest proof of which the circumstances admit. The rule, in other words, is a rule, not of law, but of evidence. Where, as in the case of a Scotch Peerage, the succession does not entitle the holder to sit in the House of Lords, and there can, therefore, be no Writ of Summons, the House of Commons has (since the Act of Union with Scotland) been accustomed to declare the seat vacant, upon such evidence of the death of the predecessor, and of the succession of the member affected, as it thought fit and sufficient.

"4. That, when a member has succeeded to a Peerage, entitling him to a seat in the House of Lords, and delays or refuses to apply for a Writ of Summons, the House of Commons is entitled, and may, in the interest of the constituency, be bound to ascertain the fact of the succession by such inquiry, and upon such evidence as it considers appropriate to the case.

"5. That your Committee do not think that the Order of Reference requires them to express any opinion upon the question whether, and under what conditions (if any), a person succeeding to a peerage ought to be allowed to divest himself of the disability, arising from the status of a Peer, for membership of the House of Commons. It follows, from the propositions above stated, that the existing law and practice of Parliament should not, in their opinion, admit of such a proceeding."

I shall not trouble the reader with extracts from the Drafts of the Reports proposed by Mr. Curzon and Mr. McNeill; because these Drafts laid down propositions which are either unconstitutional or irrelevant, or are outside of the terms of the reference made to the Select Committee, and were practically ignored by the House of Commons. Both of those honourable gentlemen mistook the scope of the Inquiry of the Select Committee.

Here, however, I wish to direct the reader's attention to the fact that, if the first conclusion of the Select Committee's Report is correct, there was no legal or Parliamentary necessity for Lord Coleridge to obtain the stewardship of the Chiltern Hundreds, for the purpose of vacating his seat in the House of Commons.

Against the Report itself, I have not a word to say; for I hold that it contains a true statement of the law on the main branch of the subject, which was submitted to the Committee. In regard to the evidence and information laid before the Committee, I do not hesitate to assert

that the Committee did not elicit a single important fact, which was not known to all fairly well-informed Constitutional lawyers, and that the appointment of the Committee was absolutely unnecessary. If the House of Commons had simply inquired, What was the condition, or status, of a person who was not in the House of Commons, when he succeeded to a British Peerage, a good deal of trouble, expense, and time might have been saved. In the case supposed, there cannot be a doubt that he ceased to be a Commoner, and was, therefore, incapable of electing, or of being elected, a member of the House of Commons. If so, what difference could there be when a person happened to be the representative of a popular constituency in the House of Commons? If a man could not elect, or be elected, a member of the House of Commons, how could he continue to possess his representative character when he had lost the status which enabled him to be elected? The existence of two Houses of Parliament, one of Peers and one of Commoners, implies the exclusion of the one class from the House of the other class. If a man is a Peer, he cannot be a Commoner; and if a Commoner, he is not a Peer. It is as much the duty of an eldest son of an English or British Peer to sit and vote in the House of Lords as of an elected Parliamentary representative of the people to sit and vote in the House of Commons.

## II.—*Earl Selborne's claim, and the proceedings and resolutions thereon.*

The facts connected with the claim set up by the second Earl of Selborne after his father's death to be the representative, for the West Division of the City of Edinburgh, in the House of Commons, are as few, simple, and undisputed as in the case of the second Lord Coleridge. The first Earl of Selborne was the Right Honourable Roundell Palmer, in the Peerage of Great Britain and

Ireland, and formerly Lord High Chancellor of Great Britain. He died on the 4th of May, 1895. His eldest son, now the second Earl of Selborne, was, at the General Parliamentary Election of 1892, elected for the West Division of Edinburgh and represented it at the time of his father's death.

On the 13th of May, 1895, Mr. Labouchere, M.P., in the House of Commons, addressed the Speaker, Mr. William Court Gully, Q.C., M.P., in these words: "I have to call your attention to the presence, in this House, of a nobleman (cries of "A stranger") who was elected at the last General Election a member of this House, and took his seat accordingly, but who, since then, I am informed, has become a Peer of the Realm; and I have to ask you, Sir, under these circumstances, whether that noble Lord has a right to be within the Bar of the House; and, if not, what steps will be taken in consequence of his being here." (Some laughter.) The Speaker said: "I think it right that I should ask the noble Lord whether it is the fact that, since he last sat in this House, he has succeeded to the peerage of his father, the late Earl of Selborne?" The Earl of Selborne answered: "Sir, I am not a Lord of Parliament but I am a Peer of the Realm." The Speaker then said: "I also ask the noble Lord this further question: Whether he has applied, or whether it is his immediate intention to apply, for a Writ of Summons in the House of Peers." The noble Lord answered: "Sir, I have not so applied, and it is not my intention so to apply, until this House has considered whether I am not still the duly-elected representative of West Edinburgh." Thereupon the Speaker said: "The question of whether the noble Lord is, or is not, entitled to sit and vote in this House is one for the House itself, and not for me; but I think it is right that I should point out to the House that, although many cases have occurred

of members standing in the position in which the noble Lord is at this moment, there is no instance on record, so far as I am able to discover, of such a claim being made as that now made by the noble Lord to sit or to vote in this House; and, under the circumstances, I must ask the noble Lord to withdraw behind the Bar until the question of his right to sit and vote in this House has been decided by the House." The Earl of Selborne at once left the seat which he was occupying, and, bowing to the Speaker, retired to a position under the gallery below the Bar. Then and there ensued a debate in which the Chancellor of the Exchequer, as Leader of the House of Commons, and Mr. A. J. Balfour, as Leader of the Opposition, Mr. Joseph Chamberlain, Mr. Curzon, and Mr. Courtney took part. On this occasion, the Chancellor of the Exchequer laid the true view of the matter before the House of Commons. He said that the following propositions are good law, namely: "1. That an English Peer by Patent—as in the present case—becomes, on his succession, not only a Peer of the Realm but also a Lord of Parliament. 2. That the right to a seat in the House of Lords is as much inherent and inseparable from his succession as his title to the dignity." He added, "I think these two things hang together in the succession," to an English or to a British Peerage. He also rightly said that a seat in the House of Commons is vacated by a member who is a Peer upon the death of his immediate predecessor. At the end of this debate, the Chancellor of the Exchequer undertook to propose a motion for the appointment of a Committee to inquire into the succession of Viscount Wolmer to the Earldom of Selborne. Accordingly, on the following day, the motion was made and a Select Committee was appointed. The Committee enquired into the matter referred to them; and on the 21st of May, the Chancellor of the Exchequer advanced

from the Bar of the House of Commons, and presented to the Clerk of the House the Report of this Committee. The Clerk at the Table read the Report, which was in these terms: "That the Hon. William Waldegrave\* Palmer, commonly called Viscount Wolmer, has, since his election to the House, succeeded to the Earldom of Selborne, in the Peerage of the United Kingdom." (Ministerial cheers.) Mr. Anstruther, M.P., the Whip of the Liberal-Unionist party, then said: "I think it will be consonant with the feelings of the majority of the House if I take the earliest opportunity of moving that Mr. Speaker do issue his warrant to the Clerk of the Crown to make out a new Writ for the election of a new member to serve in the present Parliament for the Borough of Edinburgh, Western Division, in the room of the Hon. William Waldegrave Palmer, commonly called Viscount Wolmer, now Earl of Selborne." (Cheers.) The Speaker having put the question to the House, speeches were delivered by the Chancellor of the Exchequer, Ex-Attorney-General Sir Richard Webster, Mr. Curzon, and others. Ultimately the motion for the issue of the new Writ was carried, *nemine contradicente*. Thus ends, for the present, the great constitutional question, which some few eldest sons of Peers of the United Kingdom threatened to raise in regard to a point of Parliamentary Law and Practice about which no human being had, ever before, seriously raised any doubt. The question raised was a mere quibble, and the contention set up was childish and frivolous. The Committee was a useless waste of public time. The defence of Lord Selborne's conduct, in the House of Commons, was, after the Report, feeble and perfunctory. Neither law, nor precedent, nor analogy, supported the absurd contention. Long ago it was decided that the suspension of a right of Peerage neither invalidates the right nor extinguishes it.

" Some persons have alleged that a new precedent has been established in Parliamentary Law by Lord Selborne's case. I submit that no new precedent has been established in that case ; for the undoubted Law of Parliament was that no English or British Peer could sit or vote in the British House of Commons, and that when this fact was ascertained to the satisfaction of the House, a Writ was issued as a matter of course. That there was a new procedure adopted in that case is true, but is unimportant ; for it was the necessary and logical result of the established Law and Practice of Parliament, when applied to the new and unprecedented facts before the House, namely, that the House has power to inquire into all the matters before it, and is the sole judge of its own privileges. The House of Commons, in this case, did not legally or constitutionally decide on Lord Selborne's claim to be a British Peer. They merely affirmed that the second Earl of Selborne has, in the opinion of the House of Commons, become a Peer of the United Kingdom, and, therefore, that, as such, he could not be allowed to sit and vote in the House of Commons. The House simply vindicated its own privileges as the House of the people, as an elective and not an hereditary chamber, and as entitled to exclude from its privileges all who, in their own right, were hereditary Peers of Great Britain and Ireland. On the questions raised there is no conflict of jurisdiction between the two Houses, and none can arise on this matter. If, in the House of Lords, there had been any doubts as to his rights to his father's Peerage, he would have been obliged to prove his rights, either before the Lord Chancellor of Great Britain or the Committee of Privileges of the House of Lords. As a matter of fact, Lord Selborne has given formal proof of his Peerage, and has received his Writ of Summons to the House of Lords.

The attempt made by the eldest sons of some Peers to obtain legislative recognition of the claim of persons succeeding to Peerages to remain in the House of Commons, or to go to the House of Lords, as the heirs to such Peerages thought fit, has, hitherto, utterly failed. The Bill introduced by them into the House of Commons, in 1894, and in 1895, received a very small measure of support. Its preamble is in these words: "Whereas it is expedient to remove certain disqualifications affecting the rights of certain persons succeeding to the Peerage, and enabling them to serve as members of Parliament." Its effective enacting clause was to the effect that any person succeeding to a Peerage should not, by such succession, be disqualified from continuing to serve in the House of Commons, or from being elected to serve in such House. As two of the promoters of the Bill of 1895 are now in the House of Lords, they have a splendid opportunity of convincing the House of Lords of the justice and wisdom of the claim which they set up in the House of Commons. The country has been threatened with a new agitation on this subject. Let us hope that it may take place in the House of Lords.

### III.—*The Law and Practice of Parliament as to the Vacating of Seats in the House of Commons, and the Reforms required thereon.*

#### 1. *The Law and Practice in the House of Lords as to Peerages.*

Coke upon Littleton lays down, Vol. I., p. 17b, "The true division of persons is that every man is either of the nobility, that is a Lord of Parliament of the Upper House, or, under the degree of nobility, amongst the Commons, as Knight, Esquires, Citizens, and Burgesses of the Lower House of Parliament, commonly called the House of Commons; and he that is not of the nobility is, by intendment of Law, among the Commons." The converse proposition is, I submit, no less true, that he who is not of



the House of Commons, by person or representation, is of the Lords' House.

Coke also lays down, *Vide* 12 Coke 81, that the king is the fountain of all dignity and honour in the Kingdom, and gave not only the ancient distinction of Earl or Baron to any one he pleased, but erected any name of dignity, which was not used before, and also gave precedence in titles. The titles of Duke, Marquis, and Viscount were annexed to the dignity of a Peer of the realm, and had different rights of precedence. The dignity of Earl or Baron gave a right to be summoned to the legislative assemblies of the realm as members of such assemblies, and as constituent parts thereof. The titles of Earl and Baron were originally rights by tenure of land; but they are now personal and hereditary.

A Barony is the most general and universal title of nobility. In the third Report, reprinted in 1829, on the Dignity of a Peer, in the second vol., at p. 37, it is stated that "the Crown, by its act, declaring that a man and his heirs, generally, or of any particular description, should be noble, it seems inconsistent with the nature of the grant that any person, not being the heir of the grantee, should be noble by any act of the grantee or his heirs, or that the heirs of the grantee described in the grant should cease to be noble." At page 38 it lays down that "titles to dignity usually are grants of inheritance, general or special, according to the nature of the grants or titles under which dignity have been respectively claimed, either by the express terms of the grant, or by consequence of law." A little farther on it declares that "the dignity of the Peerage is adherent to the blood of the Donee, and cannot be aliened or granted neither after, nor before, issue." In this respect, it differs from a gift of land to the Donee and his issue. The Report then contains these words: "For those who are Earls have an office of great trust and confidence, and are created for two pur-

poses—1st. *Ad consulend. Regi temp. pacis* ; 2nd. *Ad defend. Regem et patr. temp. belli*—and, therefore, antiquity gave them two ensigns to resemble their two duties : 1st. Head adherent with cap of honour, and coronet and body with a robe in resemblance of counsel ; 2nd. Girt with a sword in resemblance to be faithful to Prince and country—*Vide* Bract., l. 1., c. 8. The Report further states that, though a dignity cannot be alienated, it was once thought that it could be surrendered to the King ; as, for example, in the case of the Earl of Norfolk in the 13th year of the reign of Edward I. But, by a resolution in the House of Lords in 1640, and by a subsequent resolution in 1678 in the case of the Viscount Purbeck, a surrender of a Dignity was treated as of no effect, and these two resolutions must now be deemed the Law of England.

On the 1st of February, 1640, Lord Chief Justice Brampton delivered the opinion of the judges in the claim to the De Grey Barony, referred to the House of Lords by the King. He said “that there is incident to this great dignity of a Barony an office of service, of great trust and honour, *c.g.*, jurisdiction and vote in Parliament. The sitting there is an exercise and performance of service.” In this case, it was decided that the claimant of a Barony must make himself heir to the person first ennobled, and that a sister cannot succeed to a brother of the half-blood. Following this opinion, the entry in the journals of the English House of Lords stands thus : “It is resolved, *nemine contradicente*, (1) That no person that hath any honour in him, and a Peer of this realm, may alien or transfer the Honour to any other person ; and (2) That no Peer of this realm can disown, or extinguish his Honour (but that it descends to his descendants) neither by surrender, grant, fine, nor any other conveyance to the King.”

As to the present Constitution of the Peerage and Parliament, it is laid down, at page 61 of the second Vol. of

the said Peerage Report, as follows : " That, by the Dignity of the Peerage, the blood of the person obtaining the dignity is ennobled, and he can, by no Act (except forfeiture), destroy his title to that dignity, or even prevent its descending to others ; and the Peer holds the dignity of a Peer of the realm, not for the benefit of himself, but for the benefit of others and as a public trust." Hence, as soon as a Peer dies, his successor in the title becomes a Peer in his stead, and is entitled to all the rights and privileges, and is subject to all the disqualifications of his rank and status as a Peer. The cases of Lord Palmerston and the Marquis of Londonderry, or of Lords Tenterden and Iddesleigh are no exception to the above rule,; for the two former noblemen were Irish Peers, and were, by the Treaty of Union between Great Britain and Ireland, qualified to represent popular constituencies in England or Scotland, and the two latter noblemen, although Peers of the British House of Lords, were allowed to hold certain Government offices which were deemed incompatible with the dignity of a seat in either House of Parliament. Neither Lord Tenterden nor Lord Iddesleigh claimed a seat in the House of Commons after he became a Peer, and neither of them claimed a seat in the House of Lords until he had resigned his office in the Civil Service. Nobody objected to their holding the said offices, and they resigned them of their own accord.

As the Writ of Summons of Peerage was a command by the King to a person to attend the House of Lords by the style and title described in the Writ, so a Patent of Peerage is a royal grant to a subject of some dignity and degree in the Peerage, and is in itself a summons by the King to the person first ennobled, and confers a right on his heirs to obtain a Summons to the House of Peers.

Between 1603 and 1707, there are several instances of Scotch Peers representing English constituencies in the

English Parliament ; and there are several instances of Irish Peers from 1620 to 1801 sitting in the English and British Parliaments. Till the legislative Union of England and Scotland in 1707, Scotland was a foreign country as regards England as to its legislation ; and till the legislative Union between Great Britain and Ireland in 1801, Ireland was partially a foreign country as regards England and Britain as to its legislation. But, if a Scotchman or an Irishman, whether a Scotch or Irish nobleman or commoner, had the necessary property qualification in England, there was nothing to hinder him from being a representative in the House of Commons, or being an English Peer. He was a native born subject and under the allegiance of the Sovereign.

After the Norman times, the duties of Peers were military services, and attendance on the King, when summoned, in his Court, or in his Privy Council, or in his Great Council or Parliament. At page 62, Vol. II., the Lords' Third Report states that : " No charter, no grant, no inquisition, which the Committee have discovered, imports a reservation of the service of attending the King's Court, or his Great Council or Parliament." Tenancy *per Baroniam*, it goes on to state, is different from military service. When the service was personal, it could be refused by the King ; but when it was public, it could not be refused by him. Even as early as the time of King Henry III., it was impossible to summon all the King's tenants *per Baroniam*, for the original Barony was frequently divided and sub-divided into infinitesimal parts. Sub-infeudation was prohibited by the Statute Quia Emptores of King Edward I.

Not a single principle, or precedent, from the separation of the Parliament into two Houses, or from the time when Peerages became hereditary, or indeed before such separation, or at any time, is to be found, in the law of

England, to support the contention, which was lately and for the first time, set up that a man could actually be a Peer of England, or of Great Britain and Ireland, and, at the same time, be a representative of the Commons in the House of Commons. Mr. Speaker Onslow says that when a person becomes a peer by descent, the instant the ancestor dies the heir becomes a peer and his seat becomes immediately vacant. No authority of equal weight can be quoted to the contrary.

From the time of the Norman Conquest, the titles, dignities and honours of the Peerage have been increased in number, and changed in their nature, *e.g.*, from tenure to person, and in their mode of creation, *i.e.*, from grants and summonses to Letters Patent. They now descend from the original grantee to the heirs under the original grant to heirs general, heirs male or female, or heirs of entail, in the same manner, and according to the same laws of succession as lands. But Coke was in error when he stated that the dignity of a Peer was within the Statute De Donis. At page 56 of the second volume of the Lords' Report on the Peerage, it is laid down that there is, in truth, no resemblance between land of which the king, or any other person, is seized in fee simple, and which may be entailed, and of which the entail is protected by the Statute De Donis, and a Dignity by Patent or by Writ. "Land is the subject of perpetual inheritance, and may be limited by an entail. But a Dignity is a thing of new creation, having no existence prior to the instrument by which it is created. It is a mere emanation from the power of the Crown, having its being only by the will of the Crown, expressed in the instrument by which it is created, and enduring only so long as the terms of the grant gives it endurance."

The British Parliament is summoned, on the advice of the Privy Council, by the Queen's Writ or Letter, issued

out of Chancery. It is composed of the Sovereign, the House of Lords, and the House of Commons. The Sovereign is the supreme head of the Empire. The House of Lords is composed of Lords Spiritual and Temporal of England, of the British Peers, and of the representatives of the Scotch and Irish Peers. The British House of Commons is composed of representatives of England, Scotland and Ireland. The Sovereign and Lords Spiritual and Temporal sit in one House, and the representatives of the Commons sit in another House. The two Houses of Parliament form one body, and their consent is absolutely required for all public, private, or local Statutory Laws. The English Parliament, in ancient times, sat in one chamber, and was originally composed of all the King's Barons or Tenants-in-Chief. It was divided into two chambers in the reign of King Henry III. or King Edward III. Beyond all doubt, there was a Speaker of the English House of Commons in 1376, in the reign of King Edward III. From the very necessity of the case a man cannot be a Peer and a Commoner, or sit in the House of Lords and the House of Commons when and as he pleased. If he was a Commoner he could sit in the House of Commons as a representative of the Commons, and in no other; and if he was a Peer he could sit in the House of Peers in his own right, and in no other house. In an article in this Magazine for February, 1883, by the present writer, on the Law and Practice of the House of Lords as to Peerages, I have given some additional information on the subject under discussion.

The reader is now in possession of the facts and law to enable him to decide the question:—When do the heirs general and other heirs of a deceased Peer succeed to their deceased and immediately preceding ancestor? Do they succeed at the time of the death of such ancestor, or when they complete their legal title? Most certainly at the

very moment of the death of the ancestor. There is no interval between the death of the ancestor and the right of the heir to succeed to lands. The suspension of the right by the possibility of issue after a father's death had to be expressly introduced into the succession of land, by an express Statute, 10 Wm. III., c. 12, and by analogy and for convenience the Lord Chancellor suspends the issue of a Writ of Summons to a Peer in any case in which he is warned that there is the possibility of such issue. Where there is no such possibility of issue, the succession to a Peerage, as in landed estate, is instantaneous on the death of the ancestor. It is usual for an heir to a peerage, if a member of the House of Commons, to resign his seat in that House. In Spain the sister of the present King was treated as Queen till the posthumous birth of her brother, the present King.

The privileges of Parliament are established by the custom of Parliament and by Statute. Each House, as a constituent part of Parliament, exercises its own privileges independently of the other. Privileges of Parliament are declared and expounded by each House, and breaches of privilege are adjudged and censured by each as against the Law of Parliament. Thus, every Peer of the realm, as an hereditary Councillor of the Sovereign, has a right of personal access to the Sovereign. But the members of the House of Commons have not this privilege. Still, the House of Commons as a body has a right of free access to the Sovereign on all necessary and suitable occasions.

The Sovereign issues a Writ to each member of the House of Lords, and a Writ for each constituency of the House of Commons, for each Parliament, and a special Writ or Summons on the death of a Peer, on the demise of the deceased Peer being notified and the rights of his successor proved. After a General Election, every vacancy in the House of Commons is filled up by an order of the

Speaker of the House of Commons to the Clerk of Chancery, and by a Writ issued out of the Queen's Chancery. During the sitting of the House of Commons, vacancies are supplied by warrants issued by the Speaker, on the order of the House; and, during a recess, and after a prorogation or adjournment, the Speaker himself issues a warrant in certain cases.

When a member of the House of Commons is suspended or expelled from the House, or ceases to be a member of the House, a Committee is usually appointed to inquire into the facts and to report to the House; and the House, thereafter, takes such steps, or passes such resolutions, as it thinks fit.

The Parliament receives its legal existence from the exercise of the Royal Prerogative. But, under our Constitution, the Parliament, consisting of Sovereign, Lords and Commons, possesses the whole legislative and the supreme and absolute authority of the State. As supreme Governor, as well in all spiritual or ecclesiastical things or causes, as Civil things or causes, the Queen virtually appoints the Archbishops and Bishops, who, as Lords Spiritual, form one of the States of the realm. The Sovereign also confers all titles of honour, and thus has created the Lords Temporal, who form the remainder of the Upper House, and by royal prerogative, may, at pleasure, increase the number of the Temporal Peers. In early times, the Summonses of Peers to attend Parliament depended entirely on the royal will. But the hereditary titles of Peers have, long since, been held to confer a right to sit in Parliament.

May, in his *Parliamentary Practice*, 7th edition, at p. 33, lays down that "English Peers are ineligible to the House of Commons as having a seat in the Upper House, and Scotch Peers as being represented there by virtue of the Act of Union between England and Scotland; but that



Irish Peers, unless elected as one of the Representatives of the Peers of Ireland, may sit for any place in Great Britain." The English Master of the Rolls enjoyed an exemption from exclusion till the Judicature Act of 1873.

A person attained, or adjudged guilty of High Treason or Felony, and not having endured his punishment or received a pardon, is also disqualified from sitting in Parliament.

In the time of the English Commonwealth, at the time when there was only one House of Parliament, English Peers sat in Parliament, without election, and by rights of Peerage, and not as Commissioners. When they did so, the House of Commons was acting as the Parliament of England, and sat in one Chamber. Here we have an English illustration of the state of affairs in Scotland before the Legislative Union between England and Scotland.

True, there is no Statutory disqualification against a Peer sitting in the House of Commons. But this fact signifies nothing. Our Laws and Constitution do not derive their existence solely from Statute, but also from immemorial custom. No English or British Sovereign ever voted in the House of Commons. What then? That fact is no ground for saying that he might have the right! A negative, in a case of this sort, proves nothing.

The Sovereign can make an infant, or a pauper, a Peer of the realm. In 1784, Lord Lonsdale was made a Peer as Earl Lonsdale, and, for personal reasons, he wished to refuse the Peerage. As he had been a member of the House of Commons, he went beyond the bar of the House after he was created a Peer, and was forcibly expelled from the House.

I therefore, hold that there is no interval of time between the death of a Peer and the succession of his heir to a Peerage. The right to a Peerage, and the completed legal title to the Peerage, are two things entirely different. A man may be the executor of a person deceased, and, under

certain obligations, entitled to all the personalty of the deceased; but until he obtains Probate of the will, he cannot legally enforce his undoubted rights. There is nothing strange, or unusual, in this state of matters. Indeed, there is no more an interval in the succession to personal or real property, or to a title in the Peerage, any more than there is an interregnum in the succession to the British throne.

Till the Legislative Union between England and Scotland, every English Peer was a Peer of the realm of England. By the Act of Union between the two countries, in 1707, the Peers of Scotland were to be represented in the British House of Lords by sixteen Scotch Peers, chosen for each Parliament, and except the right to sit in the British Parliament, all the Scotch Peers were entitled to all the rights and privileges of the English Peers, and, according to their respective dignities, were to rank immediately after the English Peers. Thence arose the distinction of Peers who were not Lords of Parliament. Thereafter, on the Legislative Union of Great Britain and Ireland, in 1801, the Peers of Ireland were to be represented in the House of Lords by twenty-eight Irish Peers, and the Archbishops and Bishops of the Episcopal Church of Ireland, all chosen for life as regards the Temporal Peers, and for life or tenure of office of the Spiritual Peers. From this latter Union and during life or office respectively, and until the disestablishment of the Episcopal Church in Ireland, in 1868, the Spiritual Peers of Ireland were Lords of the Parliament of Great Britain and Ireland. Before the Legislative Union between England and Scotland, and up to the present time, English Archbishops and certain Bishops were, and now are, Lords of Parliament during their lives or offices. By an Act passed in 1875 and amended in 1878, the Lords of Appeal, for judicial business, are Peers for life. At present all Peers in the House of Lords, except

the Judicial Lords of Appeal, and the English Archbishops and certain Bishops, and the Peers of Scotland and Ireland, are all hereditary Lords of Parliament, and have succeeded to their ancestors in the Peerage, by the laws of inheritance applicable to the succession to heritage, or have been created Peers in their own persons, and with rights of inheritance to their heirs, under the Patents of Peerage in their favour.

In the recent cases of Lords Coleridge and Selborne, a good deal of discussion has arisen as to the Writ of Summons, issued by the Sovereign to each of the English and British Peers to command the presence of the latter in the British House of Lords. This Writ of Summons is issued for the beginning of each Parliament, and not for the beginning of every Session of Parliament, and is not issued individually to the Representative Peers of Scotland and Ireland. It is issued to the Archbishops and certain Bishops of the Episcopal Church of England, and also to the life Peers of the Judicial Committee. After production of proof to the Lord Chancellor by an heir to a deceased Peer, with an hereditary title of Peerage, it is also issued, to such heir, and, as a matter of course, on proof of the facts stated in a petition for the title to the Sovereign. But this Writ of Summons does not confer a right of Peerage. It does no more than acknowledge that the Sovereign is satisfied that the right of Peerage exists in the person who is summoned. If a Writ of Summons were to be issued to a person who was not legally entitled to it, the Writ of Summons might be legally set aside in a Court of Law, on the ground of essential error. Now, in recent times, all Peerages are created by Letters Patent in favour of the grantee and his heirs general or special, and all the grantees take their seats in the House of Lords after presentation of their Letters Patent, or their Summonses. But, in ancient times, some

Peerages were created by Summons, and all Peerages in England, Scotland, and Ireland, were completed by a solemn inauguration in Parliament, or at Court. When a Peerage was created by Summons, the person summoned must have sat in Parliament, or his Peerage did not become hereditary. In Scotland Peerages could be, and were often, resigned into the hands of the Sovereign, by the possessors, and new grants of Peerage were created for life, and in fee, in favour of a different series of heirs than that under the original or former grant. Nay more, we have resignations and grants of Peerages in Scotland, in favour of husbands for life, and find them exercising all the rights of the Scottish Peerage. Till James VI. of Scotland succeeded to the English throne, in 1603, all the Peerages of Scotland were connected with grants of lands obtained from the Crown, or created into a Barony, with some special title or dignity, as Baron, Earl, Marquis, or Duke. Queen Mary created her first husband, Lord Darnley, King of Scotland, and conferred on him the Crown Matrimonial, and, for a short time, joined him, with herself, in the administration and government of Scotland. Thus far as to the nature and incidents of the Peerage of England, Scotland, Ireland, and Great Britain. The nature and incidents of representation in the House of Commons need not, in this place, detain us long.

## 2. *Law and Practice in the House of Commons.*

In England the Parliament was originally based on the individual or representative character of its members as the King's tenants in chief. It was subsequently divided into two Houses, comprising (1) the Temporal and Spiritual Peers, and (2) the representatives of the Commons. The Irish Parliament was based on the later model of the English Parliament, and was divided into two Houses of Peers and Commons. The Scottish Parliament followed the same

lines as the English Parliament, but was never divided into two Houses. Sometimes it had Spiritual Peers, and sometimes it had not. At the settlement, after the Revolution of 1689, there were no Spiritual Peers in Scotland, and no such Peers have been appointed since. From the earliest times, no representative in the House of Commons was allowed to resign his seat in Parliament in England. The person elected by the freeholders was bound to serve as a representative in Parliament, and he could neither resign his office, nor refuse to accept it. In England, when a representative in the House of Commons was created a Peer, by a Writ of Summons or by Letters Patent, he presented his Writ or Patent at the Bar of the House of Lords, and, after some formalities, took the oath and his seat in the House of Lords. In Ireland, a representative of the people in the House of Commons, when he was made a Peer, went through the same formalities. When the Peerage was created by Summons, the right was legally completed when the person summoned took his seat in the House of Lords, and then he became a Peer and ceased to be a Commoner. But, when the Peerage was created by Letters Patent which had passed the Great Seal, the right to the Peerage emerged at once, and the grantee, or, if dead, his heir, became absolutely entitled to an hereditary Peerage, according to, and in terms of the Royal grant. In Scotland, a representative of the people in the House of Commons ceased to be a Commoner on a grant of the Peerage being formally completed, and then the new Peer removed from the place set apart for Commoners, and took his seat in the place appropriated to the Peers of that realm. I know of no creation of a Peerage in Scotland by Writ of Summons.

May also explains that, when an eldest son succeeds to a Peerage, he produces evidence to the Lord Chancellor of

his father's marriage, of his father's death, of his being the eldest son and heir, and of the terms of his father's Patent. As a matter of fact, he formally draws up a petition to the Queen for his Summons to the House of Lords, sends it to the Home Secretary, who presents it to the Queen, who orders the Lord Chancellor to inquire into it, and, if all things are in order, to issue the Writ of Summons to the new Peer. If the Lord Chancellor is not satisfied that the petitioner is a Peer, he reports accordingly to the Queen, and allows the petitioner to take such steps as may be necessary to bring his claim before the Committee of Privileges of the House of Lords. An informal, and perhaps irregular and illegal method of proof is by submitting the necessary evidence to the Lord Chancellor, and by his lordship's ordering a Summons to be issued to the new Peer in cases in which there can be no doubt as to the legal right to a Writ of Summons. Whether the claim comes before the Lord Chancellor or before the Committee of Privileges, the Sovereign, as the fountain-head of all honours and dignity in the realm, is supposed to decide the matter. The order for the issue of a Writ of Summons to a Peer by descent is, or should be, by an order of the Privy Council. Some people, in these democratic days, are apt to forget, or ignore, the fact, that the Ministers of State, from the Prime Minister to the lowest subordinate in the Ministry, are, according to the Constitution, the servants of the Crown.

If a member of the House of Commons is created a Peer, his seat is not vacated until the Letters Patent, conferring the dignity, have passed the Great Seal." When, however, it is advisable to issue a Writ for a vacancy in the House of Commons, without delay, in the case of a member of the House created a Peer, and it is doubtful whether the seat be legally vacated, the member accepts the Chiltern Hundreds before his Patent is made out.

May, in his *Parliamentary Practice*, 10th edition, p. 595, states that the causes of vacancy in the House of Commons are the deaths of members, the elevation of members to the Peerage, the acceptance of office under the Crown, bankruptcy, mental imbecility, attain for treason, conviction for felony, and the determination of the election judges that elections or returns are bad. Two pages farther on in the same edition, he lays down that: "If a member becomes a Peer by descent, a Writ is usually moved soon after the death of his ancestor is known; though occasionally some delay occurs in obtaining the Writ of Summons, which ought strictly to precede the Writ, that proceeding being founded on the alleged fact that the member has been called to the House of Peers." He cites several precedents for this statement.

On the 15th of February, 1809, the House of Commons being informed that no Writ of Summons had been issued to General Bertie, calling him to the House of Lords as Earl of Lindsey, though a Writ had been issued for the Borough of Stamford, ordered a supersedeas of the Writ. Again, on the 10th of January, 1811, a new Writ was issued in the room of Lord Dursley, "now Earl of Berkeley," without stating, as usual, that he was called to the House of Peers. His claim to the Berkeley Peerage not being admitted by the House of Lords, he afterwards sat as Colonel Berkeley, until, in 1831, he was created Lord Seagrave.

No such statement as to the issue of a Writ is required in the case of a Scotch Peer to whom no Writ of Summons by the Crown is issued. On the 21st of February, 1840, a new writ was issued for Perthshire, in room of Viscount Stormont, "now Earl of Mansfield, and Viscount Stormont, in the Kingdom of Scotland," though it was allowed on all hands that no Writ of Summons had then been issued to his lordship in respect of his British Peerage

as Earl of Mansfield. Again, in 1861, a new Writ was issued for Aberdeenshire, in the room of Lord Haddo, "now Earl of Aberdeen, in the Peerage of Scotland," before he had received his Writ of Summons, in respect of his British Peerage as Viscount Gordon.

In regard to the disqualification of a member of the House of Commons to sit or vote in the House, after receiving an office of profit under the Crown, it was declared, in 1706, by the 25th sect. of the Act of 6th Anne, c. 41: "That, if any member shall accept of any office of profit from the Crown, during such time as he shall continue a member, his election shall, and is hereby declared to be void, and a new Writ shall issue for a new election, as if such person so accepting was naturally dead, provided, nevertheless, that such person shall be capable of being again elected."

At page 605, May edition, states that: "It is a settled principle of Parliamentary Law that a member, after he is returned, cannot resign his seat, and in order to evade this restriction, a member, who wishes to retire, accepts an office under the Crown, which legally vacates his seat, and obliges the House to order a new Warrant." The offices usually selected for this purpose are the offices of Steward or Bailiff of Her Majesty's three Chiltern Hundreds of Stoke, Desborough, and Bonenham, or the Steward of the Manors of East Hundred, Northstead, or Helmholme. The practice of giving one of these appointments to vacate a seat in the House of Commons began in 1750. The office of Escheator of Munster was used for a similar purpose for vacating Irish seats; but this office of Escheator was abolished in 1838.

The office of Steward of the Chiltern Hundreds is an appointment under the hand and seal of the Chancellor of the Exchequer, and does not now carry with it any actual salary or emolument. All words of honour in the appointment



have been omitted since 1801. The profit of the office is now a mere fiction. In 1775, Mr. George Grenville moved for a bill to enable members of the House of Commons to vacate their seats; but up till the present time no such bill has been passed in Parliament. The office of Steward of the Chiltern Hundreds is usually conferred, as a matter of course, on application, and is usually held until revoked to make way for the appointment of another member, who wishes to retire from the House of Commons. Under 24 Geo. III., c. 26, amended by 26 Vict., c. 20, in issuing a writ during a recess, in the case of a seat being vacated by succession to a Peerage, the Speaker requires a certificate of two members of the popular assembly that a writ of summons has been issued under the Great Seal of Great Britain to summons the new Peer to Parliament. Till 1833, the eldest sons of Scotch Peers could not sit in the British Parliament.

### 3. *Vacating a Seat in the House of Commons.*

I submit to the reader that a representative of the people in the House of Commons ought to be at liberty to resign his seat in the House at such time as he thinks fit provided (1) he gives due public notice to his constituents of his wish and intention to resign, and (2) obtains the sanction of the House of Commons to his resignation. For example, he might be compelled to give his constituents a month's notice of his intention to resign his seat; and on no objection being raised, he ought, then, to be allowed, at once, to resign his seat. Thereafter, the procedure should be, as at present, on motion and resolution, and the issue of a new Writ. No representative during the adjournment or prorogation of Parliament should be allowed to resign his seat in the House of Commons, because the House ought always to be allowed to refuse any motion of the resignation of a member. The proposals

here suggested would protect all the rights of the parties concerned, and would remove all objections against partizan or Governmental manœuvres for unjustifiably seizing on a seat in the House of Commons. I am also inclined to think that the time has arrived for the abolition of the rule which compels a member of the House of Commons to resign his seat on his appointment to an office of profit under the Crown. This rule is now antiquated, useless, and expensive.

#### IV.—*The Reform of the House of Lords.* . . .

Much discussion has recently taken place as to reforming the House of Lords. Formerly, the House of Lords was all powerful in the Government of this country. Now, although it is, by the Constitution, equal in Legislative power to the House of Commons, and has exclusive jurisdiction as a Court of Appeal in judicial business, it is, by the progress of democratic opinion, inferior in power to the House of Commons in the Government of the country. Ultimately, when there is a difference of opinion between the two Houses of Parliament on any great public question in legislation or administration, the House of Commons, when backed up by the popular constituencies, must prevail. Still, the wealth, power, and wisdom of the individual members of the House of Lords, and of the House as a whole, have an enormous influence which cannot be destroyed by any reform or abolition of the House of Lords. Some modification may be required in the British Constitution as to the hereditary principle of the English and British Peerage, but no modification should be made without the deepest and most anxious consideration as to all the facts and consequences involved. The dangers of an hereditary chamber have long been foreseen, and should be dealt with in a broad and imperial spirit. For the present, the House of Lords performs important, useful, and essential duties in

the Constitution of the country ; for it is in a position to reject or modify dangerous, and even doubtful measures which, under the impulse of a temporary public opinion or passion have passed the House of Commons.

Various Reforms of the House of Lords have been proposed.

1. Extreme Radicals and Republicans would abolish the House of Lords, root and branch, or, at least, take away from the House all legislative, judicial and administrative power in the country. They say that they would in all other respects allow hereditary honours and titles to remain on their present basis. Some of them would also, no doubt, if they could, abolish the Monarchy, with all its rights, privileges, honours and emoluments, and establish a Republican form of Government in its stead. They are for ending, and not for mending the House of Lords: Their ideal of democratic government is based on the principle that no legislative functions should be performed, unless by the elected representatives of the people. The extreme Radicals and Republicans in this country are a small, insignificant, and uninfluential body, whose opinions and aims may, for the present, be set aside as visionary and impracticable.

2. Another proposal for the Reform of the House of Lords is to allow a person, who succeeds to a Peerage, to make a choice for himself, whether, or not, he will become a Peer of the realm. This proposal is made ostensibly in the interest of a poor man who does not wish to be burdened with the heavy pecuniary responsibility of his position. Those who have made this proposal have not very accurately defined its extent, and bearings, and consequences. For example, should the impecunious heir to a Peerage be allowed to renounce the Peerage for himself, or for himself and his issue, or for himself and all the parties entitled to the Peerage by the original grant? Should the renunciation be permanent, or temporary? Should it

involve a descent of the title to the next and succeeding heirs? If by an heir to a Peerage for himself, or for himself and his own heirs, are the next following heirs to have any rights of reversion or objection to a total surrender? One heir to a Peerage may be poor, his successor may be rich. The former may not, and the latter may, have children, or *vice versâ*.

3. Another proposal is to reduce the House of Lords from a position of co-ordinate authority to a subordinate position, and to allow the House of Lords a simple power of veto or revising, in details, and not in principles, such measures as have passed the House of Commons, and to allow the House of Lords nothing more than the right of acceptance, or rejection, in matters of principles, and to compel the House of Lords to pass Bills after they have been passed in the House of Commons, either two or three times in the same Session, or in the same Parliament. If this proposal were made the law of the land, the House of Lords would soon be extinguished as a legislative assembly, and a demand, which could not be justly refused, would be made by the Peers to be released from their petty and humiliating duties, and to be allowed the power, if so inclined, to transfer their services to the House of Commons.

Those who admire the equilibrium of the British Constitution do not wish to see the supremacy or despotism of any single Chamber, aristocratic or democratic, but prefer to continue the combined action of the House of Commons for the removal of all just grievances, and of the House of Peers to prevent the despotism of a temporary majority in the House of Commons. A Second Chamber is an invaluable part of our composite Government, and essential for the preservation of our world-wide Empire.

4. Another proposal is the abolition of the "Lords' Veto." This grand proposal has gone the way of the late Radical Government, and nobody rightly understands what the

Government meant by an ambiguous and misleading phrase. Some people have been daring enough to assert that not even the charmed inner circle of the Cabinet knew how their proposed reform was to be carried out. My own suspicion is that, when the Government was defeated, they had no real plan in existence. If their scheme ever sees the light, it will, I think, be framed on the basis that the House of Lords is to have no power of legislation at all, and must pass the Bills sent to it by the House of Commons, or it must be something in the form once suggested by the late Mr. John Bright, to the effect that, when a Bill was rejected once and returned to the House of Lords a second time, the latter must accept it. Such an arrangement for a co-equal member of a legislative body would not be long tolerated, and would end, as it did in the time of the Commonwealth, in the total extinction of the House of Lords, and in the sole supremacy of the House of Commons in the Government of the Empire. This is a result which I hold all true lovers of their country should endeavour to prevent. As a matter of fact, the House of Lords would never accept such a humiliating position, and the end would be, as before, civil war. By the Constitution, no resolution which either of the Houses could pass has any binding force on the other. A Resolution of the House of Commons, that the House of Lords must pass all Bills sent a second time to them by the House of Commons has no chance of being accepted by the House of Lords, and would be null and void and of no force or effect whatever. On the 4th of January, 1648, the Commons passed a motion that the Resolutions of the House would thenceforth be equal to Laws, and would not require the consent of the House of Lords to make them effectual. This Resolution overturned the Constitution, and was set aside at the Restoration. The consent of the House of Lords is required for every Legislative Act of the British Parliament, and it cannot be

constitutionally abrogated, annulled, or rendered unnecessary unless by an Act of Parliament passed by the Sovereign and the two Houses of Parliament. The abolition of the Lords' Veto is absurd.

5. A moderate, rational, and beneficial Reform in the House of Lords would be: (1) to reduce the present number of the House of Lords by introducing the principle of representation amongst the English and British Peers; (2) by reducing the number of the English Bishops in the House of Lords; (3) by introducing the principle of life Peerages for distinguished judicial, civil, military, naval, industrial, literary, and scientific men, at home; and (4) by introducing some representatives of our Indian Empire, and of all the British Colonies and dependencies, for example, by means of the Indian Princes, and of the Agents-General of the British Colonies or of representative groups of British Colonies and dependencies.

The House of Lords, as at present constituted, is too numerous, and has too many of its members unknown and insignificant in public affairs to impress the great body of the nation with a high sense of its dignity and wisdom.

As long ago as the year of the reign of George I., a Bill was introduced by the ministry to limit the number of the Peers in the House of Lords. Since then the increase in the number of the Peers has been enormous, and I do not see on what public grounds this increase can be defended. The Prime Ministers of the day should no more be allowed to bring about an increase of the Peers than of the representatives in the House of Commons. As a rule they, to all intents and purposes, and not the Queen, exercise this Royal prerogative. Some Liberal politicians say that no principle of selection would be satisfactory to the country, unless it was based on popular election. I do not agree with them, and am apt to think that in this, as in many other matters, they hold that their own opinions are

the true opinions of the country. I would prefer self election by the Peers to popular election of the Peers, because the former mode has been already introduced into our Constitution, and because a popularly-elected House of Lords would be very little different from a popularly-elected House of Commons. Nay, more, unless the election for the House of Lords was to be made by counties, or combination of counties, and not by the present constituencies, the House of Lords would soon become worthless as a Second Chamber. Moreover, a diminution in the representation of the Bishops of the English Church would enable the English Bishops to do more good to the community than in the House of Lords.

Many men well able to bestow important services on their country are prevented from bestowing them by the heavy burdens of an hereditary Peerage. Moreover, all men know that many fathers who have been created Peers in recognition of their great personal accomplishments and high public provinces, have had eldest sons and successors who have had none of their virtues.

Lastly, I know of no more effective constitutional scheme for uniting the mother country and her colonial possessions and her Indian Empire than by the creation of life Peerages and public office Peerages for our most distinguished fellow subjects in India and Colonies, side by side with a just and generous treatment of our Indian Empire and Colonies.

The reforms which I have here ventured to put forward would broaden and strengthen the House of Lords as a Senate, and would enable it to perform its high duties as a Court of Appeal in law, administration, and legislation. I therefore submit them to the reader for his serious consideration. I wish to build on the old foundations of the Constitution; and I believe that no principle of popular election would so powerfully tend to the preservation of

our rights and privileges as the first nation in the world as the reforms I have briefly indicated.

### *Conclusion.*

The House of Commons has been reformed and popularised, and the House of Lords should be also. The latter should be based on Conservative and Democratic principles, or it will be destroyed. The establishment of a great, powerful and Imperial Senate for the whole of the British Empire is fast approaching and will take place sooner or later. Nearly twenty years elapsed between the rejection of the Wensleydale life Peerage and the acceptance of the principle of life Peerages by the House of Lords. Perhaps as long a period may be required to make any important or effective Imperial changes on the present constitution of the House of Lords. Let us remember the wise maxim of all Government, *Festina lente*. When anything is to live for centuries, its growth is slow. In the meantime, I would conclude this article by suggesting that no Peers should be allowed to sit or vote in the House of Lords before the age of 40, or after the age of 70, and that when a Peer could not sit or vote in the House of Lords, he should be capable of election as a member of the House of Commons. With the men we have at our command, from all parts of the Empire, we have the material of the grandest, wisest, and most experienced Senate in the world.

ALEXANDER ROBERTSON.

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#### IV.—CURRENT NOTES ON INTERNATIONAL LAW.

##### **Territorial Disputes.**

It is not often in these days that new territory is acquired in the "Spanish Main" by occupation. In January last, however, a desolate spot known as Trinidad Island and lying off the coast of Brazil was formally annexed on behalf of Great Britain by the commander of H.M.S. *Barracouta*.\* The step seems to have aroused an unnecessary storm of indignation in Brazil, which claims the island by virtue of its having been formerly occupied by Portugal, though subsequently abandoned. As a matter of fact it would appear that, although in all probability Portuguese or Spanish navigators were its first discoverers, they never attempted any permanent occupation of it in early times. In William III.'s reign an Englishman, Edward Halley, the astronomer, who was cruising in the neighbourhood, landed upon the island and hoisted the British flag upon it. For the next 80 years it was left severely alone, and then a British ship again examined it but took no further steps towards appropriation. Subsequently the Portuguese occupied it for a short time and then abandoned it.

Under these circumstances, some pretty questions of Title may well arise if the suitability of the island for a submarine cable centre makes it worth while for our own Government to insist on their claim.

In another part of the world, the Mekong boundary question is generating more serious international friction. The matter will merit some detailed consideration, when better information is available as to the facts in dispute.†

\* See *Times*, 6th and 7th August, 1895.

† For a good but probably *ex parte* summary of the situation see *Times*, 13th August.

The controversy between our own Government and Venezuela as to the ownership of certain boundary territory still remains open. The British Government is averse to submitting to arbitration claims in respect of which it asserts Venezuela has not even made out a *prima facie* case. There has been some ridiculous talk on the part of certain irresponsible Anglophobes in the United States of a forcible application of the "Monroe Doctrine," which so many Americans still fondly imagine to be a well-established principle of International Law.

The real truth seems to be that the United States Government are making diplomatic representations with the object of inducing Great Britain to consent to arbitration on all points in issue. The Senate actually passed a resolution requesting the Executive to use its best efforts to bring about this end.\*

*À propos* of the "Monroe Doctrine," it is interesting to observe that not only unofficial persons in the United States openly advocate the cause of the Cuban Insurgents, but even Governors of States so far derogate from the dignity of their position as to publicly express sympathy with persons who are, at all events, technically "rebels" against a friendly State.† It is not many years since our own country was vilified for supposed sympathy with the Confederates—but the memory of American politicians is proverbially short!

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#### Arbitration.

The *Costa Rica* Packet Case, in which a British ship was seized by the Dutch authorities in the East Indian Archipelago on a charge of piracy, has been submitted to arbitration. The Emperor of Russia has, at the request of

\* See *Times*, 5th October, etc.

† See *Times*, 2nd October.

the two Governments concerned, nominated Professor de Martens as arbitrator.\* Probably no better selection could have been made than that of a Member of the Institute of International Law. The proceedings will be awaited with more than usual interest.

### "Intervention" in China.

The diplomatic representations consequent upon the recent massacres of European missionaries in China culminated at the end of September in the delivery of an "Ultimatum" to the *Tsung-li-Yamen* demanding that an Imperial proclamation degrading the Viceroy of the Szu-Chuan Province should be issued within 14 days, or in default the British admiral would "take action." Whether by accident or design, a decree such as was demanded, was published within 24 hours of the "Ultimatum"—probably an instance of promptitude unparalleled in the annals of Celestial Diplomacy.† The exact nature of the "Ultimatum" in its relation to other cases of Intervention is not at present very clear, but, doubtless, Parliamentary papers will shortly be published giving fuller details.

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### Madagascar.

The facts of the *Castine* incident have now been fully reported. Commander Perry of the United States warship *Castine* was held justified in refusing to salute the French flag at Tamatave on the ground that by the United States Treaty with the Hovas, the exclusive native control over the whole island had been expressly recognized. A serious *fracas* with the French officials at the port seems to have been avoided by the tact of the American officers. The

\* *Times*, 14th September.

† *Times*, 30th September and 1st October.

apologies promptly demanded by the latter were as readily given by the French.\*

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### **The Institute of International Law.**

The Institute held its annual meeting this year at Cambridge, under the Presidency of Professor Westlake, Q.C. We hope to give an account of the proceedings in our next number; meanwhile we may briefly state that the subjects discussed in full meetings of the Institute comprised the following:—(a.) The Guardianship of Minors; (b.) Penal Sanctions under the Geneva Convention; (c.) Immunities of Diplomatic Agents; (d.) International Copyright, and some proposed modifications of the Berne Convention of 1886.

In addition to these, two other subjects, *i.e.*, Double Nationality and Contraband of War, were discussed in departmental committees, but the full consideration of them was adjourned. As regards Nationality, the Conclusions of the Committee were shortly these:—

- (1.) No one can be without a Nationality.
- (2.) No one can have two Nationalities.
- (3.) Anyone is free to change his Nationality.
- (4.) A mere declaration is insufficient to effect a change.
- (5.) The "Nationality of Origin" ought not to be indefinitely transmissible from generation to generation in a foreign country.

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### **The "Association" at Brussels.**

The 17th Conference of the "Association for the Reform and Codification of the Law of Nations" took place this year in Brussels under the presidency of the English Attorney-General, Sir Richard Webster.

Amongst the matters discussed were "International Arbitration," "Neutralization of Seas and Interoceanic Canals," "Marriage Laws," "The Alcohol Traffic in Africa," "Execution of Foreign Judgments," and "Territorial Waters."

As regards the last mentioned subject, a series of resolutions were agreed to, very similar to those passed last year at the Paris meeting of the "Institute."\*

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### Consular Courts in the East.

The question of the precise position and jurisdiction of the Consular Courts in Japan was minutely discussed in the recent case of *The Imperial Japanese Government v. The Peninsular and Oriental Co.*, 72 L.T.R. 881. The facts, very shortly stated, were as follows:—In consequence of a collision between the P. and O. steamer *Ravenna* and the Japanese torpedo-cruiser *Chishima*, an action for damages was brought by the Imperial Government against the Company in the Consular Court of Yokohama. The Company pleaded negligence on the part of the cruiser, and asked leave to counter-claim for damages against the plaintiffs. This was refused by the Consular Court, and the refusal was ultimately upheld by the Privy Council. The judgment of the Court was delivered by Lord Herschell. The material points of interest decided may be summarized as follows:—

- (1.) Under the "most favoured nation clause" in the Anglo-Japanese Treaty of 1868, the Consular Courts have exclusive jurisdiction in actions by natives against British subjects, while the local Courts have exclusive jurisdiction in actions by British subjects against natives.

\* See *Law Mag. and Rev.*, Vol. 19, p. 318.

- (2.) When a suit is brought in the Consular Courts by a Japanese against a British subject, "it is not a matter of election" on the part of the former, since by treaty, "he has no choice."
- (3.) Therefore it cannot be urged that such a Japanese plaintiff, by bringing such an action, voluntarily submits to any rights of counterclaim which might ordinarily exist in a British Court.
- (4.) According to the "manifest spirit and intent" of the Treaties, the jurisdiction of the Consular Courts extend to a case where the Japanese Government is plaintiff.
- (5.) Under the circumstances, there was no jurisdiction to allow the counterclaim.
- (6.) The defendants were entitled to use the facts contended in their proposed counterclaim as a *defence* to the action, and it was possible that such facts, if proved, might be taken into consideration, to induce the Court to withhold payment of any damages awarded to the plaintiffs, until they had submitted to a deduction in respect of damage sustained by the defendants' ship. (See the *Seringapatam*, 3 W. Rob. 38.) The Privy Council, however, declined to express any opinion on this point.

While dealing with Japanese questions, we would call attention to the recent case of *O'Neill v. Armstrong, Mitchell & Co.*, 1895 (2 Q. B.), 70, which, however, was really decided on a point unconnected with International Law.

JOHN M. GOVER.

## V.—NOTES ON RECENT CASES (ENGLISH).

**Railway Debenture Holders.—Arrears of Interest and Transfers.**

A CURIOUS question was that raised by a debenture holder in the West Lancashire Railway Company. The point was whether the transferees of the first and second debentures of the Company were respectively entitled, by virtue of their transfers, to interest stock representing arrears of interest on the principal stocks. The Company was incorporated by special Act of Parliament in 1874, and under that, and subject to special Acts, they created and issued first and second debenture stocks. In 1894 the interest on those stocks having fallen into arrear a special Act was passed under which two new sums of stock were created, called respectively first and second debenture interest stocks. These were to be issued and allotted to the holders of first and second debenture stocks in exchange for and in extinguishment of equal amounts of arrears of interest on the first and second debenture stocks. The transferees of first and second debenture stocks now claimed that the transfers to them of those stocks and the registration of such transfer carried not only the interest accrued since the date of registration, but also the debenture interest stocks representing the arrears on the amount of the capital debenture stocks transferred and registered. This view, however, was not accepted by the West Lancashire Railway Company, and the case of *Chapman v. West Lancashire Railway Company* came before the Chancery Division in August last. The plaintiffs were transferees of first and second debenture stocks. The Court decided against the defendants, holding that their (the railway company's) special Act of 1894 was a legislative recognition

that those who held the stocks were entitled also to the arrears of interest in respect of which interest stock was issued. Mr. Justice Kekewich pointed out that such a case was not likely to occur again, or if it did, it would be necessary to pass an Act of Parliament with regard to the particular company concerned. The present case was decided on general principles.

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#### The Rank of an Hotel.

That there is great difficulty in compiling a guide book to meet all parties, innkeepers, tourists, and guide book makers is apparent from the case of *Howard v. Dulan & Co.* The plaintiff was an hotel proprietor of Jaffa, and sought both to recover damages from, and to have an injunction issued against, the proprietors of "Baedekers Guides," with regard to the publication of certain statements as to his hotel at Jaffa. The plaintiff complained of certain words in the second edition of the "Palestine and Syria Handbook for Travellers," and his grievances were three, namely, that in the guide book—(1) he had been called an Arab; (2) that his hotel was styled a second-class one, and that it was cheaper than the first-class hotel in Jaffa; and (3) it was suggested that it was advisable for travellers to bargain with him. As regards the allegation that he was an Arab the plaintiff contended that he was a British-born subject of Maltese parents in Syria, and well known in Palestine as a first-class hotel proprietor and tourist contractor; and he objected to the term "Arab" because it means an outcast, an uncivilised man, a semi-savage, a man who does not know how to manage an hotel, and who lives in the deserts, and he hinted that the Bedouins were recruited from unsuccessful innkeepers. One of the plaintiff's witnesses said the hotel might fairly be described as second class if there was a better, but there was not. As regards the matter of bargaining alleged to be required,



though customary in the East, it would appear not to be followed at plaintiff's hotel. The jury said it was libellous to describe such a person as the plaintiff as an Arab, or to state that bargaining was required, and they also came to the conclusion that the description of the plaintiff's business was substantially incorrect and derogatory to his business, and, therefore, a libel. They did not think the matter of bargaining applied particularly to the plaintiff, though the defendants had honestly made a mistake. A sum of £50 was awarded as damages. It may be pertinently hoped that such a decision as this will not lead to the discontinuance, by Guide Book Compilers, of stating the different ranks of hotels

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#### Pedlars v. Hawkers.

Two men were charged by a Local Board of Health that they had sold or exposed for sale in a cart drawn by a horse within the limits of the market owned by the Board, potatoes, in respect of which tolls were authorized to be taken in the market. The Local Board, it appeared, was a local authority within the Public Health Act, 1875, and the Pedlars Act, 1871, and in that position was the owner of a market under the provisions of sect. 13 of the Markets and Fairs Clauses Act, 1847. According to that section every person other than a licensed hawker selling tollable articles within the limits of a market is liable to a penalty. These two men did not hold a hawkers' license, but merely a pedlar's certificate, obtained under the Pedlars Act, 1871. A pedlar's certificate is for the purpose of the Markets and Fairs Clauses Act, 1847, to have the same effect within the district for which it is granted as a hawker's license, and the term "licensed hawker" is to be construed in that Act to include a pedlar holding such certificate. When the case was before the magistrates, the men contended that on the authority of *Howard v. Lupton*

(L.R. 10 Q.B. 598), they were, by virtue of sect. 6 of the Pedlars Act, 1871, licensed hawkers for the purposes of sect. 13 of the Markets Acts, and consequently exempt from the penalties prescribed by that section. On the other hand, the Local Board argued that sect. 6 of the Pedlars Act, 1871, simply meant that the term "licensed hawket" in sect. 13 of the Markets, 1847, was to include the persons whom the term "pedlars" was defined by sect. 3 of the Pedlars Act, 1871, to mean, that is to say, persons who, with a horse or other beast bearing or drawing burdens, travel and trade on foot. The men, the Local Board said, did not come within this definition. The magistrate, considering he was bound by the foregoing decision, dismissed the case. The case, *Woolwich Local Board of Health (Appellants) v. Gardiner and Another (Respondents)*, was, thereupon, taken to the Queen's Bench Division, the nut for the Court to crack being whether the magistrate was bound to dismiss the summons. Looking at sect. 2 of the Pedlars Act, 1881, the Divisional Court held that, inasmuch as a pedlar's certificate authorizes the person to whom it is granted to act as pedlar within any part of the United Kingdom, the case of *Howard v. Lupton* ought not to be followed, not being a binding authority, for it was a criminal case where there was no right of appeal. A pedlar was exempt from the sect. 13 of the Markets and Fairs Clauses Act, 1847, only while acting as a pedlar within the definition of a pedlar given by sect. 3 of the Pedlars Act, 1871. As the appeal was allowed, the order of the magistrate was quashed. The case is practically interesting, as shewing the risk of a pedlar using a horse.

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#### Are Garden Vases and Statues Fixtures?

A feature of a private estate was an Italian garden wherein was placed a stone balustrade for statues or vases.

When the owner of the property died he left his wife a life interest in the estate. The widow subsequently added other marble and bronze vases, some being erected on pedestals so as to form part of the balustrade. These additions the widow paid out of her own pocket. On the death of the widow the points occurred as to whether these garden statues and vases were to be included and belong to her estate, or whether they were affixed to the freehold. When the case *Buckley v. Lyne Stephens* was argued before the Divisional Court reference was made to the rules laid down in *Hellawell v. Eastwood*, where it was stated that the question of fact depended on the circumstances of each case, and chiefly on two considerations, first, the mode of annexation to the soil or fabric of the house, and the extent to which it is united to them; whether it can easily be removed or not without injury to itself or the fabric of the building. Secondly, in the object and purpose of the annexation, whether it was for the permanent or substantial improvement of the dwelling, or merely for a temporary purpose, and the more complete enjoyment and use of it as a chattel. In *D'Eyncourt v. Gregory* it had been held that all articles which formed either essential parts of the mansion or parts of its architectural design, accompanied the mansion. In *Buckley v. Lyne Stephens* the Court, approving these decisions, and also that in *Holland v. Hodgson*, upheld the view of the referee that the articles were fixed to the freehold, for the widow's purpose was to enjoy the land as a garden, and not the various articles merely as objects of art. No doubt if instead of the vases there had been put on the balustrade coping stones especially adapted for the purpose, the proper inference would be that the intention was to annex the property in them to the property in the land, even though they rested only by their own weight, and it seemed to the Judge that the like inference ought to be drawn with reference to the vases. The inference is stronger as

regards the statues and vases placed on pedestals attached to the soil by the directions of the widow. This decision is another illustration of the well-known maxim *quidquid plantatur solo, solo cedit* (whatever is annexed to the soil becomes part of the soil).

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### Agents and Damage to Goods.

Where a foreign manufacturer sends goods to an agent in England, is a landlord liable to his tenant for damage to the articles? This point arose out of an uncommon case, *Brown v. Hand in Hand Fire and Life Insurance Society*; in the Divisional Court, where the plaintiff, a manufacturer's agent, was tenant to the defendants. On one occasion the agent found that water had come through the upper floor in the premises and spoilt goods and samples. The plaintiff claimed damages for these losses, and though he contended that there had been negligence and breaches of contract and of the covenant for quiet enjoyment, the Court would not hold that he was entitled to any right of action as to the damage to the goods. As regards the injury to his samples, he could claim the £10 the jury had awarded. His Lordship, Mr. Justice Kennedy, threw out a hint that if the manufacturers had been joined as plaintiffs the full amount of damages would have been recoverable.

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### According to Instructions.

An amusing incident of an advocate "speaking from instructions" was disclosed at Bradford when a man was charged with stealing a bicycle the property of the solicitor engaged to defend him. Being concerned in a County Court case, the prisoner engaged an advocate to plead his case, and subsequently sent for him to the police-station, saying he was in trouble for stealing a bicycle. He told the solicitor that he had "a complete answer to the charge,"

and the advocate repeated his assurance. Unfortunately, when the solicitor came to look at the bicycle, which the police had secured, he found it was his own property, and had been taken by the prisoner when he came for consultation. For the next six weeks this ingenious person will be taken care of at the public expense, and the Yorkshire solicitor probably now realises more clearly than ever the wisdom of the qualifying legal phrase, "according to my instructions."

T. F. UTTLEY.

## Books Received.

*Principles of the Common Law.* By John Indermaur, Solicitor. Seventh Edition. Stevens and Haynes, London, 1895.

*Rogers on Elections.* Vol. II. Seventh Edition By S. H. Day. Stevens and Sons, Limited, London, 1895.

*A System of Legal Medicine.* By Allan McLane Hamilton, M.D., and Lawrence Godkin. E. B. Treat, New York. The Rebman Publishing Company, Ltd., London, 1895.

*The Law of Waste.* By Wyndham Anstis Bewes, LL.B. Sweet and Maxwell (Lim.), London, 1895.

*Penological and Preventive Principles.* By William Tallack. Second edition. Wertheimer, Lea and Co., London, 1895.

*Réponse aux Objections Présentées Contre le Projet de Règlement sur la Contrebande de Guerre.* By M. R. Kleen, Brussels, 1895.

*La Nouvelle Organisation Judiciaire du Japon.* By M. Ernest Lehr, Brussels, 1895.

*Les Conversions des Emprunts Russes.* By M. le Comte de Labry, Paris, 1895.

*Report on Exterritorial Crime, and the Cutting Case.* Department of State, U.S.

*An Epitome of Hindu Law.* By Chhotalal Karsandas Mulji and F. A. Ráná, B.A., LL.B., Bombay.

*Chapters on the Law Relating to the Colonies.* By Charles James Tarring, M.A. Stevens and Haynes, London.

*Outline of Roman History from Romulus to Justinian.* By David Nasmith, Q.C., LL.B. Butterworths, London.

*The Practice on the Crown Side of the Queen's Bench Division.* By Frederick Hugh Short and Francis Hamilton Mellor, M.A. Stevens and Haynes, London.

*A Concise Treatise on Private International Jurisprudence.* By John Alderson Foote. Stevens and Haynes, London.

*The Science of International Law.* By Thomas Alfred Walker, M.A. Cambridge University Press.

## Reviews.

*Negligence in Law.* Being the Second Edition of Principles of the Law of Negligence. Re-arranged and re-written by THOMAS BEVEN, of the Inner Temple, Barrister-at-Law. Two Vols. London: Stevens and Haynes. 1895.

In two volumes of something over 850 pages each Mr. Beven has succeeded in comprising all the learning of the Law concerning Negligence. In the first Book we notice Constitutive principles, viz., definitions, standard of negligence for the jury, rule in contract, ditto in tort, gross negligence, vindictive damages, responsible agents, act of God, onus of proof, contributory negligence, and Lord Campbell's Act. Book two deals with the authorities, commencing with the Sovereign, specially constituted for exercising control. Book three deals with the duty to exercise control over property. Book four deals with the duty to answer for one's own and sometimes for others' acts. This concludes the first volume. In the second volume, Book five explains the special relations arising out of contract, touching, by the way, on innkeepers, common carriers, telegraphs, and telephones. Book six deals with skilled labour, as, for example, that of a stockbroker, a surgeon, or a solicitor, and *faute de mieux*, for a better place, touches here on the profession of a barrister. In Book six, which completes the treatise, we are given considerable information concerning unclassified relations, viz., partnership, directors, trustees and executors, bankers and estoppel. We have rarely met with a work so good of its kind, or in which so much industry has been displayed, and to judge of the value of the comments of the writer, he says concerning *Meux v. Great Eastern Railway Company* (*Times L.R.* 315): "A case in my opinion wrongly decided. A trespass was admitted—plaintiff's property was actually injured by direct violence. The defendants were therefore put either to justify or excuse their act. Now the act does not admit of justification." Since the Book has been published, the Court of Appeal has overruled the above decision and established conclusively the truth of the opinion thus laid down by Mr. Beven. The work contains an excellent Table of Cases and references to the Civil Law Year Books and Statutes, prepared by Mr. Riches, the industrious

and erudite Librarian of the Royal Courts of Justice, whilst an excellent Index completes one of the most useful works issued from the Press for many years. It ought to have a place on the table of every practising barrister. We should not forget to add that the author acknowledges the assistance of his friend Mr. W. F. Craies, of the Inner Temple and Western Circuit, barrister-at-law, in reading the proof sheets, verifying the cases, correcting, criticising and suggesting.

*La Legislazione Inglese sulla stampa comparata alla Legislazione Italiana.* By CELSO GRASSI. Bologna: Ditta Nicola Zanichelli. 1895.

This is an example of those rare and interesting books in which English Law is treated by a foreigner. The faults which we generally find in them are not absent in Signor Grassi's learned work. These are the use of authorities without much regard to their value, the standard text-book standing no higher than the short, ephemeral compendium, and the general ignorance of the recognised mode of citation of cases. For instance, an English lawyer would cite *Wason v. Walter* as reported in L.R. 4 Q.B. 73, Signor Grassi cites it vaguely as having been decided in the Court of Queen's Bench in 1867.

The difference between the Law of England and the Law of Italy is largely due, as the author points out, to the development of the one from case-law, of the other from code-law. Italy starts from the maxim—the first article of the Press Edict of 26th March, 1848—*la stampa sarà libera, ma una legge ne reprime gli abusi*; England never says any such thing in direct terms, not even in the Bill of Rights, and the corresponding Law must be sought by abstracting numerous statutes and precedents. The defects and advantages of the English Law as compared with the Italian are stated very clearly, and in a manner which ought to be very instructive to an English lawyer. The principal defects—for Signor Grassi alleges our failures before our successes—are either extrinsic or intrinsic. Extrinsic defects are (1) excessive slowness of development; (2) want of harmony in principles. Intrinsic defects are (1) the arbitrary nature of the theory of punishment, inflicted only because publication of a defamatory statement tends to a breach of the peace; (2) the presumption of malice, in most cases unnecessary; (3) exclusion of the *exceptio veritatis* in criminal prosecutions, except where publication is for the

public benefit; (4) uncertainty as to what constitutes a defamatory statement, the jury practically determining at its discretion what is, or is not, actionable or punishable. The advantages are, like the defects, extrinsic and intrinsic. The only extrinsic advantage is the constant progress of development, slow but certain, as illustrated by the history of the censorship. The intrinsic advantages are the recognition of the *exceptio veritatis*—to a limited extent, but beyond what is allowed in some countries—and the privilege attaching to reports by newspapers of proceedings in Court and at public meetings. It is in this privilege that Signor Grassi finds the most incontestable superiority of the English over the Italian system. It may be noticed that the Italian Parliament has no summary power of committing for contempt the author of a libel on itself.

The Appendix contains most of the statutes affecting the liberty of the press from Fox's Libel Act of 1792 to the Law of Libel Amendment Act, 1888, and there is also a fairly full bibliography, somewhat wanting, as has already been suggested, in discrimination of authorities:

There are one or two matters of interest not touched upon by Signor Grassi, and in a subsequent edition it might perhaps be advisable not altogether to omit them. Instances are slander of title, as in *White v. Mellin*, [1895] A.C. 154, injunction against publication of a libel, defamation of the dead, and allegation of felony against one who had been convicted, but had endured his punishment, as in *Leyman v. Latimer*, 3 Ex. D., 15, 352. It is a pity that the learned author allowed to pass uncorrected such blunders as "british," "french," "cheks," and, worst of all, "Sir Romilly" and "Sir Cockburn!" These do not appear perhaps very serious to an Italian, but they attract the eye of an English reader at once, and are apt to prejudice him against a book which is obviously the result of much labour and study, and is well worth reading.

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*The Theory and Practice of Private International Law.* By Dr. L. DE BAR. Second edition, revised and enlarged; translated by G. R. Gillespie, Advocate of the Scottish Bar. Edinburgh: William Green and Sons.

Dr. de Bar published the first edition of this important work at Hanover in 1862; in 1889 he published what he styled a second edition, which practically is a new work, the subject of



International Criminal Law, which he took up together with Civil Law in the former edition, being omitted in this. We observe many subjects in this new edition which were scarcely noticed in the first, such as nationality, copyright, industrial property, and other topics of which the new Italo-French school of so-called Private International Law has shewn the way. Dr. de Bar considers that what he and other writers term *Private International Law* does not require as a condition precedent to its existence that it should have been constituted, so far as its leading principles or doctrines are concerned, by treaties or by legislation; but that it exists because it is a necessity, and the force of circumstances make it so. We must do him the justice to say that he frankly admits that the title, "*Private International Law*," cannot be altogether approved, but he considers it best to adhere to the expression because he finds, to use his own words, "we know what we are to understand by it." The name of Dr. de Bar goes further to prove the value of the work than any praise of ours can do.

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*A Treatise on the Statutes of Limitations.* By EDGAR PERCY HEWITT, LL.D., of Lincoln's Inn, Barrister-at-Law. London: Sweet and Maxwell, Ltd.

It is known by all lawyers that the Law of Limitations determines the limits of time within which rights may be enforced, while on the other hand Prescription is a title taking its substance of use and time allowed by the Law. The Real Property Limitations Acts belong properly to the Law of Prescription, but they are in part, and throughout in form, Statutes of Limitation. The writer, therefore, wisely deals with them also in the work before us. It is impossible, with the limited space at our disposal, to do justice to this work; suffice it to say that the author has done his work very thoroughly, and his treatise may be looked on as the leading text-book on the subject.

*The Anglo-Indian Codes.* Edited by WHITLEY STOKES, D.C.L., of the Inner Temple, Barrister-at-law, Correspondent of the Institute of France, and late Law member of the Council of the Governor-General of India. Vol. II.: *Adjective Law.* Oxford: at the Clarendon Press.

This volume contains the Code of Criminal Procedure, 1882; the Code of Civil Procedure, 1882; the Limitation Act, 1877;

the Durbitor's Act, 1888, as well as numerous appendices and Acts of minor importance. It is evident that to the lawyer practising in India the book must be of extreme value, containing as it does, in a space of 1,158 pages, the Codes of both Civil and Criminal Procedure. To the student in this country, preparing for practice in our Indian dependency, it will prove a serviceable friend and legal exponent.

*Our Indian Protectorate, an Introduction to the Study of the Relations between the British Government and its Indian Feudatories.* By CHARLES LEWIS TUPPER, Indian Civil Service. London: Longmans Green & Co.

Mr. Tupper begins by distinguishing between International Law and Indian political Law, and proceeds to give a brief sketch of the political history and growth of the Protectorate; he then turns to the history of ideas and shows the origin and character of the British policy towards the native States. He is of opinion that our existing system of relations with native States is thoroughly sound, beneficial, and capable of much useful development. In his last chapter, "On Indian and Imperial Federation," he indulges in some speculations as to the future. The book is well written and of a very interesting character throughout.

*The Theory of Credit.* By HENRY DUNNING MACLEOD, M.A., of Trinity College, Cambridge, and the Inner Temple, Barrister-at-Law. Second Edition, in two Vols. London: Longmans Green & Co.

Mr. Macleod designs this work as a complete manual on the important question of Economical Inquiry and Reform on the subject of Banking, and therefore is obliged to deal deeply with Economics. The details are striking and far more interesting than the dry title of the book would suggest; for instance, we learn that paper was first used as circulating money by the Chinese, about the year A.D. 807, and that in Scotland and Ireland, Bank of England notes are not legal tender in any case. The money which a Barrister spends in acquiring a professional education is money used as Capital, and he makes his income out of it by exercising his professional knowledge, that is, we suppose, whenever he is fortunate enough to obtain a brief.

*Rogers on Elections.* Vol. II. Parliamentary Elections and Petitions, with Appendices of Statutes, Rules and Forms. Seventeenth edition. By S. H. DAY, of the Middle Temple and South Eastern Circuit, Barrister-at-Law. London: Stevens and Sons, Limited. 1895.

It is a sign of the times that this well-known work has expanded into three volumes, of which the second has attained its seventeenth edition under the fostering care of Mr. S. H. Day. The editor has dealt very completely with a very difficult and complex subject; true only one Act, viz., The Corrupt and Illegal Practices Prevention Act, 1895, has modified the statute law on the subject, but the decisions of the Courts on the various questions touched on in this volume have had to be dealt with. The subjects allotted to this volume consists of incapacities for being elected, proceedings previous to the election, at the election, and after the election, election agent and election expenses, the petition, trial, election commissioners, bribery, treating, undue influence, personation, illegal practices, and agency. The appendices contain many cases not reported elsewhere, reports of committees, statutes, rules, and forms. The whole, including a useful index, is contained in something under 750 pages. Great credit is due to the learned editor for presenting the profession with so useful a work, which bears deep traces of learning and of labour.

*A System of Legal Medicine.* By ALLAN McLANE HAMILTON, M.D., Consulting Physician to the Insane Asylums of New York City, etc., and LAWRENCE GODKIN, Esq., of the New York Bar, with the collaboration of others. Illustrated. 2 Vols. New York: E. B. Treat. London: The Rebman Publishing Company, Limited. 1895.

We are glad to find that the influx of medical jurisprudence is steadily increasing. The work before us, the production of some of the most talented members of the medical and of the legal professions in America, is a work of great erudition, and must have given much labour to its composers. The real beginning of the science of forensic medicine is generally ascribed to the publication, in 1553, by the Emperor Charles V. of Germany, of the *Constitutio Criminalis Carolina*; but it was not until the 17th century that we began to have authentic recorded instances of the employment of forensic medicine in England.

In applications for the postponement of the sentence of death on account of pregnancy, in prosecutions for rape, and in applications for a decree of nullity on the ground of incapacity to consummate marriage, it was the practice to empanel a jury of matrons to examine and report to the Court. In this century the development of the science of forensic medicine has been rapid and important, but the contesting parties to the proceedings select their own experts and pay them. This system has, in some cases, led to abuse, and there is a growing feeling on the part of judges that experts, belonging to no party but officers of the Court, should be appointed. The first volume contains a dissertation on *post-mortem* examinations, on identity of the living, homicide, wounds, poisoning, insurance, and legal relations of physicians to their patients. The second volume deals with insanity, aphasia, traumatic neuroses, electric currents, accidents, feigned diseases, pregnancy, abortion, marriage and divorce, and surgical malpractice. The work is of a perfectly trustworthy character, and should obtain a high place among the modern treatises on medical jurisprudence.

*The Law of Waste.* By WYNDHAM ANSTIS BEWES, LL.B.  
Sweet and Maxwell, Limited. 1894.

The Law of Waste, based as it is to a great extent on the Roman Law of "usufruct," is complex and difficult. Quite apart from contract, express or implied, attempts have been made in most systems of Law to deal with the often conflicting interests of limited owners on the one hand and of reversioners and remaindermen on the other. The principle generally adopted would appear to be that a limited owner must not use the object over which his right exists for purposes other than those for which it is designed, nor must the character of such object be changed, while the object itself must be restored in as good condition as that in which it was received. Within the 450 pages of his book, Mr. Bewes has dealt exhaustively with the Law of Waste as it was, as it is, and, in some few instances as, he suggests, it might be. Under the old Common Law, Waste was interpreted with merciless severity, for, even when the reversioner was benefited by the Waste, a limited owner was often dispossessed and heavily fined for committing it; gradually, however, the Law has become less harsh, and to-day the rival interests are

treated more equitably. Having defined the nature of Waste, Mr. Bewes traces the history of the old Statutory and Common Law remedies; then the Law is considered as it applies to botes and estovers, under and seasonable wood, timber, mines, minerals and fixtures; justifiable, meliorating, equitable and permissive Waste, and the burden of repairs, are lucidly explained. The rights and liabilities of landlord and tenant, mortgagor and mortgagee, of trustees, of copyholders, and of limited owners of ecclesiastical property, are fully dealt with. The more important statutes are given in an appendix, and an excellent index completes a book that cannot fail to be of service to the profession, focussing, as it does, for the first time within one volume, the Law of Waste.

*Both to Blame.* By F. W. RAIKES, Q.C., LL.D. Pewtress and Co. 1895.

This is a paper by Mr. Raikes on the Conflict of Law where two vessels are held jointly in fault for a collision, lately read before the Conference of the Association for the Reform and Codification of the Law of Nations at Brussels. Some idea of the excellence of the treatise may be proved by the fact that the Underwriters immediately ordered 1,000 copies of it.

Among periodicals we notice : *The University Law Review*, of New York; *The American Law Review*, of St. Louis, Mo.; *The Chicago Legal News*; *The State Library Bulletin*, of Albany; *The Law Book News*, of St. Paul, Minn.; *The Toledo Legal News*, of Toledo, O.; *The National Corporation Reporter*, of Chicago; *The Virginia Law Journal*; *The Canadian Law Times*; *The Western Law Times*, of Canada; *The Madras Law Journal*, *The Law Times*, London; *The Law Journal*, London; *Bulletin Mensuel de la Société de Législation Comparée*; *Annuaire de Législation Française*; *Annuaire de Législation Étrangère*, Paris; *La Revue Générale*; *Revue Bibliographique Belge*.

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# Quarterly Digest.

BY

C. H. LOMAX, M.A., OF THE INNER TEMPLE, BARRISTER-AT-LAW.

## INDEX.

Where a case has already been given in the Digest for a preceding quarter, the additional report, is given after the name of the case, with a reference to the volume of the Digest in which it first appeared, the thick number being the number of the volume.

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# Quarterly Digest

OF

ALL REPORTED CASES

IN ADDITION

Law Reports, Law Journal Reports

FOR AUGUST, SEPTEMBER, AND OCTOBER, 1895, AND IN THE  
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## Administration:—

- i.) **Ch. D.**—*Capital and Income—Apportionment—Money Paid under Erroneous Order—Interest.*—Money forming part of a testator's estate was paid away under an order of the Court, but was recovered without interest on the order being varied on appeal. *Held*, that the money so recovered should not be treated as capital only, but that a fair proportion should be paid to the tenant for life as income; and that interest should be taken at 4 per cent. [1895] 2 Ch. 542.
- (ii.) **Ch. D.**—*Capital and Income—Apportionment of—Interest—Rate of.*—In apportioning between capital and income the amount of an unconverted reversionary interest which has fallen in, interest should for the future be calculated at 3 per cent.—*Marland v. Williams*. L.R. [1895] 2 Ch. 537.
- (iii.) **Ch. D.**—*Change of Law of Domicile.*—In administering the estate of a person who died domiciled abroad the Court applies the law of the place of domicile as it existed at the death of the deceased, without taking account of any subsequent changes though retrospective.—*In re Aganor's Trusts*, 64 L.J. Ch. 521.

## Arbitration:—

- (iv.) **Ch. D.**—*Costs of Reference—Umpire's Fees—Taxation—Lands Clauses Acts, 1845, ss. 34, 35; 1869, s. 1.*—An umpire having made an award under the Lands Clauses Act, the landowner took up the award and paid the umpire's fees. These fees were disallowed by the taxing master who taxed the costs of the reference. *Held*, that the landowner was not entitled, as against the railway company, to take up the award, and the umpire's fees, having been disallowed by the taxing

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- (i.) **Ch. D.**—*Partnership—Action—Staying Proceedings—Arbitration Act, 1889, s. 4.*—A. and B. agreed by partnership articles to refer all disputes arising during or in the winding-up of the partnership to arbitration. The business was a failure, and disputes having arisen, A. brought up an action for dissolution. On motion by B., *held*, that proceedings must be stayed, and the matter referred to arbitration.—*Denton v. Legge*, 72 L.T. 626.

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- (ii.) **Ch. D.**—*Contempt—Solicitor and Client—Order to Pay Money—Part Payment—Waiver.*—A writ of attachment was issued against a solicitor at the instance of clients for the non-payment of money which he had been ordered to pay. The clients agreed to suspend proceedings on the writ on payment by the solicitor of a sum on account. *Held*, that they did not thereby waive their right to enforce the writ.—*In re Fereday*, L.R. [1895] 2 Ch. 437; 73 L.T. 56.

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- (iii.) **P. C.**—*Negligence—Acquiescence—Government Officials.*—A depositor of goods for safe custody, who by himself or his servants has had an opportunity of observing defects in the storehouse, cannot be taken to have agreed that any risk of injury which such defects might cause to his goods should be borne by himself and not by the bailee. A Government official who is under an obligation to an individual to perform a service in consideration of remuneration, is not within the principle which protects trustees representing public interests from the consequences of mere non-feasance.—*Brabant v. King*, 72 L.T. 785.
- (iv.) **P. C.**—*Title of Bailor—Estoppel.*—The bailee is in general estopped from disputing the title of the bailor; but if there is an eviction by title paramount, the bailee is, in the absence of any special contract, discharged from all liability.—*Ross v. Edwards*, 73 L.T. 100.

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- (vi.) **C. A.**—*Act of—Goods Held by Sheriff—Computation of Time.*—Decision of Q. B. D. (*see* Vol. 20, p. 96, v.) affirmed.—*E. p. Hasluck; in re North*, L.R. [1895] 2 Q.B. 264.
- (vii.) **C. A.**—*Assets—Money Paid to Prevent Seizure—Bankruptcy Act, 1883, s. 11, sub-s. 2.*—Decision of Q. B. D. (*see* Vol. 20, p. 96, vi.) affirmed.—*Bower v. Hett*, L.R. [1895] 2 Q.B. 337.
- (viii.) **Q. B. D.**—*Conversion of Business into Company—Rights of Creditors.*—The bankrupt, when insolvent, had converted his business into a "one-man" company. *Held*, that the trustee in bankruptcy was entitled to a declaration that the conveyance of the business to the company was void as against him, and that he was entitled to the assets of the company, but that he must pay the new creditors of the company in full, in priority to the creditors of the bankrupt, as the latter had used the company as his agent, and must indemnify it.—*In re Carey; e. p. Jefferies v. Carey Cycle Co.*, 43 W.R. 605.

- (i.) **C. A.—Order and Disposition—True Owner—Bankruptcy Act, 1883, s. 44 (iii.).**—When the trustees named in a settlement of property of a person who afterwards becomes bankrupt have had no knowledge of the settlement, or, on being informed of it, decline the trusts, the beneficiaries and not the trustees are the true owners of the property for the purposes of the “order and disposition clause”; and their consent to the property being in the “order and disposition” of the “reputed owner” cannot be given if they are under incapacity, as, for instance, children or married women restrained from anticipation.—*In re Mills’ Trusts*, L.R. [1895] 2 Ch. 564.
- (ii.) **C. A.—Pension Inalienable—Indian Law—Discretion—Bankruptcy Act, 1883, s. 53, sub-s. 2.**—Decision of Q. B. D. (see Vol. 20, p. 97, v.) affirmed.—*Saunders, v. p.; re Saunders*, L.R. [1895] 2 Q.B. 424.
- (iii.) **Ch. D.—Plaintiff in Action made Bankrupt—Discontinuance by Trustee—Assignment of Interest—Fresh Action.**—The plaintiff in an action having become bankrupt his trustee elected not to continue the action, and an order to stay proceedings was made. The trustee assigned the bankrupt’s interest. *Held*, that the assignee could not institute a fresh action for the same relief.—*Bean v. Flower*, 73 L.T. 118.
- (iv.) **Ch. D.—Receiver—Book-debts—Order and Disposition—Notice—Bankruptcy Act, 1883, s. 44, sub-s. 2 (iii.), s. 49 (d).**—The defendant mortgaged to the plaintiff his business and book-debts. The mortgage contained no power to appoint a receiver. Default was made, and under the statutory powers R. was appointed receiver, and took possession of the premises and carried on the business. The defendant committed an act of bankruptcy, after which an action for foreclosure was commenced and F. was appointed receiver and manager. A receiving order was made founded on the act of bankruptcy. No notice of the mortgage was given to the defendant’s debtors. F., while in possession received certain book-debts due to the defendant at the commencement of the bankruptcy. *Held*, that they were in the bankrupt’s order and disposition, and that the trustee in bankruptcy was entitled to the sum so received.—*Rutter v. Everett*, 73 L.T. 82.

### Bill of Exchange:—

- (v.) **Q. B. D.—Cheque—Obtained by Fraud—Non-existing Payee—Forgery—Holder in Due Course—Return of Money Paid—Bills of Exchange Act, 1882, s. 7, sub-s. 3.**—A clerk of the plaintiffs, by means of forged certificates for work never done, obtained cheques from the plaintiffs to the order of a non-existing person. He forged the indorsement of such person’s name, and paid the cheques to the defendants, who had no notice of the fraud. *Held*, that the payee was a “non-existing or fictitious person” within sect. 7 of the Act, and that the cheques were payable to bearer; that the defendants were “holders in due course,” and could have recovered on the cheques; and that as the plaintiffs had paid the cheques to the defendants they were not entitled to a return of the money.—*Clutton v. Attenborough*, L.R. [1895] 2 Q.B. 306; 64 L.J. Q.B. 627; 73 L.T. 64.

### Bill of Sale:—

- (vi.) **Q. B. D.—Attestation by Party—Statement of Consideration—Term for Maintenance of Security—Bills of Sale Act, 1882, ss. 8, 9, 10.**—An agent of the grantee may be an attesting witness to a bill of sale. A debtor borrowed money from certain creditors to enable him to pay a composition. He granted them a bill of sale, the consideration being stated as £150 advanced to him. The money was in fact paid to a

joint account in the names of the debtor and L., an agent of the creditors, who was to see to the application thereof. *Held*, that the consideration was truly stated. A stipulation in the bill of sale provided that the grantee should not during the continuance of the security obtain credit to the amount of more than £10 without the consent of one of the lenders, and should give the lenders the greater part of his business, and should allow them to inspect his books. *Held*, that this was not a term for the maintenance of the security, and that the bill of sale was void.—*Peace v. Brookes*, L.R. [1895] 2 Q.B. 451; 72 L.T. 798.

- (i.) **H. L.—Hiring Agreement.**—A. supplied an engine to P. upon the terms that P. should pay the price by instalments. Until the instalments were all paid P. was not to assign or remove the engine without A.'s consent, and it was to remain A.'s property until the instalments were all paid. On the failure of P. to pay an instalment, A. might sue for the whole price, or might resume possession of the engine and sell it, paying to P. the balance of the purchase-money beyond the amount due. *Held*, that the agreement was not a bill of sale, and did not require registration.—*W'Entire v. Crossley* L.R. [1895] A.C. 457; 72 L.T. 731.
- (ii.) **P. C.—Non-registration—Bankruptcy—Intent to Defeat Creditors.**—A. made an advance in good faith to C., who was solvent at the time, and took a bill of sale as security. At the request of C. the bill of sale was not registered. C. became bankrupt, and A. took possession under the bill of sale shortly before the bankruptcy. *Held*, that the bill of sale was not void as having been made with intent to defeat or delay creditors.—*Morris v. Morris*, 72 L.T. 879.

### Building Society:—

- (iii.) **Ch. D.—Dissolution—Instrument of—Withdrawing Members—Priority—Building Societies Act, 1874, ss. 18, 32.**—A building society cannot, by an instrument of dissolution, vary the rights of members under the rules by taking away the priority of members who have given notice of withdrawal, unless such variation has been previously sanctioned at a special meeting held under sect. 18, and under the society's rules.—*Botten v. City and Suburban Permanent Building Society*, L.R. [1895] 2 Ch. 441; 64 L.J. Ch. 609; 72 L.T. 722.
- (iv.) **C. A.—Mortgage—Postponement of Security—Ultra Vires.—Decision of Ch. D. (see Vol. 20, p. 3, vi.) affirmed.**—*Portsea Island Building Society v. Barclay*, L.R. [1895] 2 Ch. 298; 64 L.J. Ch. 579; 72 L.T. 744.

### Canal:—

- (v.) **H. L.—Right of Support—Mines—Compensation.**—Decision of C. A. (see Vol. 20, p. 4, i.) affirmed.—*Chamber Colliery Co. v. Rochdale Canal Co.*, 64 L.J. Q.B. 645.

### Carrier:—

- (vi.) **Q. B. D.—Carriage by Sea—Liability.**—The plaintiff employed the defendant to transport wool from London to Bradford. It was taken in the defendant's ship to Goole and sent on by rail. The plaintiff paid a rate per ton to cover the whole carriage, including insurance. The defendant effected the insurance and kept the policy. There was no bill of lading. On previous occasions under similar circumstances the defendant had received the insurance moneys and settled with the plaintiff. When the plaintiff imported wool from Australia he insured it for the whole transit, and the defendant charged a less rate from

London to Bradford. The wool was damaged on board the defendant's ship by sea-water. *Held*, that the defendant had undertaken the liability of a common carrier, and had insured to cover his own liability, and that he was liable for the damage without proof of negligence.—*Hill v. Scott*, L.R. [1895] 2 Q.B. 371; 64 L.J. Q.B. 685.

# Colonial Law :—

- (i.) **P. C.**—*Cape of Good Hope—Company—Business in Colony—Licence—Colonial Act, No. 3 of 1864, Sched. 17*—By the schedule mentioned every joint-stock company "any of the dealings of which shall, by the deed or other instrument regulating such company, be described as to be carried on in this Colony," was required to take out an annual licence. A company, having its principal office in England, included amongst the objects mentioned in the memorandum "to carry on in any part of the world the business," &c. It carried on business through an agent in the Cape Colony. *Held*, that it did not come within the schedule.—*Marshall v. Orpen*, 72 L.T. 783.
- (ii.) **P. C.**—*Cape of Good Hope—Landlord and Tenant—Right to Remove Buildings*.—By the law of the Cape of Good Hope a lessee who annexes materials, other than growing trees, to the soil, may remove them during the tenancy. A lease provided that if no rent should be due the lessees should be at liberty to remove all such improvements as should be capable of removal, without injury to the land. *Held*, that this did not deprive the lessees of their common law right to remove a brick building erected by them on the land, the foundations of which were eighteen inches deep.—*London and South African Exploration Co. v. De Beers Consolidated Mines Co.*, L.R. [1895] A.C. 451; 64 L.J. P.C. 123; 72 L.T. 609.
- (iii.) **P. C.**—*Ceylon—Divorce—Jurisdiction—Domicile*.—The matrimonial law, now applicable to European residents in Ceylon, is the Roman Dutch law, which prevailed in the Colony before annexation. By that law the Courts of the island have no jurisdiction to dissolve a marriage contracted in England between British subjects, who, though resident in the Colony, still retain their English domicile. The domicile for the time being of a married couple affords the only true test, according to international law, of jurisdiction to dissolve the marriage, there being no recognised rule to the effect that "matrimonial domicile" gives such jurisdiction.—*Le Mesurier v. Le Mesurier*, L.R. [1895] A.C. 517; 64 L.J. P.C. 97; 72 L.T. 873.
- (iv.) **P. C.**—*China and Japan—Practice—Joinder of Distinct Causes of Action*.—There is nothing in the rules of the Supreme Court for China and Japan to warrant the joinder in one suit of distinct causes of action, not being causes of action by and against the same parties.—*Peninsular and Oriental Steam Navigation Company v. Teune Kijima*, 73 L.T. 37.
- (v.) **P. C.**—*New South Wales—Municipal Corporation—Highway—Non-repair—Liability*.—A statute relating to a municipal corporation repealed previous statutes and provided that all rights and liabilities existing at the commencement of this Act shall be and continue to be binding on and enforceable in favour of "the corporation as if this Act had not been passed." *Held*, that these words did not include all the powers and duties possessed by the corporation or imposed on it by the repealed statutes. A statute vested all public ways in a city in the corporation, and gave it power to maintain and repair the same. *Held*, that no action would lie against the corporation for non-repair of such ways.—*Municipal Council of Sydney v. Bourke*, L.R. [1895] A.C. 433; 72 L.T. 605.



- (i.) **P. C.—Queensland—Religious, Educational, and Charitable Institutions Act, 1861—Bequest—Presbyterian Church—Validity.**—Where the officers of an institution or community have been incorporated under the Act, the institution or community is incorporated through them, and a gift made for any of its objects is made in favour of the corporation, although the donor may have selected other trustees, and although the gift is not directly or in terms in favour of the corporation. A gift to a congregation in union with the Presbyterian Church of Queensland is a gift to or in favour of that church, and is therefore within the Act.—*McSwaine v. Lascelles*, 73 L.T. 33.

### Company:—

- (ii.) **C. A.—Auditors—Misfeasance—Companies Act, 1879, s. 7.**—Although it cannot be laid down as a general rule that auditors are officers of a company, yet in the case of a joint-stock banking company the auditors must be taken to be officers, in consequence of the section above-mentioned, and are therefore liable for misfeasance.—*In re London and General Bank*, 72 L.T. 611.
- (iii.) **C. A.—Debentures—Floating Security—When Attached.**—Where the debentures of a company are a floating security over the company's assets, subject to a condition that the company shall be at liberty to deal with its assets until (*inter alia*) default shall be made in payment of interest for three months, the debenture-holders must apply for a receiver at the expiration of such period in order that the floating security may attach.—*Government Stock Investment Co. v. Manila Railway Co.*, L.R. [1895] 2 Ch. 551; 72 L.T. 886.
- (iv.) **Ch. D.—Debentures—Priority—Beneficial Occupation.**—A company was in possession of certain works in the bed of the river, under a licence from the Conservators, which reserved an annual payment. The debentures of the company comprised all its assets, and a debenture-holders' action was commenced. A receiver and manager was appointed with power to raise money to carry on the business. A certain debenture-holder advanced £1,000, taking a charge on the assets in priority to the debentures. Other debenture-holders advanced £196. The assets were sold under an order of the Court. *Held*, that the Conservators were entitled to the sums due under their licence in priority to all other claims; that the receiver was next entitled to the costs of the sale, but not to those of protecting the assets; that the lenders of the £1,000 were next entitled in priority to the debentures; and that the lenders of the £196 could only come in as debenture-holders after payment of the costs of litigation.—*Lathom v. Greenwich Ferry Co.*, 72 L.T. 790.
- (v.) **C. A.—Debenture—Execution Creditor—Rights of.**—(See Vol. 20, p. 100, iv.) *Held*, by C. A., that upon the facts of the case there had been no sale by the sheriff, and decision of Ch. D. affirmed on that ground.—*Taunton v. Sheriff of Warwickshire*, L.R. [1895] 2 Ch. 319; 72 L.T. 712; 43 W.R. 579.
- (vi.) **Ch. D.—Investment—Depreciation—Appreciation—Earnings since Liquidation—Capital or Income.**—A company had made an investment on capital account which fell in value, and the depreciation was charged to revenue. When the company went into liquidation the investment had risen again in value, and the liquidator credited to revenue the amount so charged as depreciation. *Held*, that the amount so credited must be treated as income. The earnings of a company after liquidation are capital not income.—*Bishop v. Smyrna and Cassaba Railway Co. (No. 2)*, L.R. [1895] 2 Ch. 596; 64 L.J. Ch. 617; 43 W.R. 647.

- (i.) **C. A.**—*“One Man” Company—Indemnity.*—Where a company is formed to enable a trader to carry on his business with limited liability in the name of a joint stock company, such company is entitled to be indemnified by the trader against its debts.—*Broderip v. Salomon*, L.R. [1895] 2 Ch. 323; 72 L.T. 754; 43 W.R. 612.
- (ii.) **Ch. D.**—*Reduction of Capital—Investment of Assets.*—A limited company having power to invest its capital, and acting within the scope of its business, has power to surrender part of a particular investment with the view to improving the remainder, and this is not a “reduction of capital.”—*Thomson v. Trustees, Executors, and Securities Insurance Corporation*, L.R. [1895] 2 Ch. 454.
- (iii.) **C. A.**—*Transfer—Refusal to Register.*—Directors had power under their articles to refuse to register a transfer if in their opinion the transferee was not a desirable person to admit to be a member of the company. They refused to register a transfer, but gave no reason for their refusal. *Held*, that in the absence of evidence that they were not acting *bonâ fide* their refusal could not be questioned.—*In re Coalport China Co.*, L.R. [1895] 2 Ch. 404; 73 L.T. 46.
- (iv.) **Ch. D.**—*Winding-up—Private Examination—Right to Inspect Depositions.*—*Companies Act*, 1862, s. 115.—In a winding-up, at any rate under a compulsory order, every contributory, and every creditor whose claim or proof has been admitted, is entitled, as of right, to inspect and take copies of all depositions of evidence taken at a private examination, whether the evidence was given by himself or other persons.—*In re Standard Gold Mining Co.*, L.R. [1895] 2 Ch. 545.

### Copyhold:—

- (v.) **Ch. D.**—*Admission—Right of Lord to Seize—Possession—Limitations.*—The defendant for more than twenty years held lands, copyhold of a manor, as tenant to his father under a special agreement. Neither he nor his father were ever admitted tenant of the manor. Two proclamations for the heir to come in were made by the lord. The father died intestate. By the custom of the manor copyholds of an intestate were divisible among the sons. The defendant claimed to hold the land as freehold, and set up the Statute of Limitations. *Held*, that he could not set up the statute against his father or those claiming under him, and that, as only two proclamations had been made, the lord's right to seize had not arisen, and the statute did not begin to run against him, and therefore, that the defendant and his brothers were entitled as copyhold tenants in common.—*Beighton v. Beighton*, 73 L.T. 86; 43 W.R. 685.

### Copyright:—

- (vi.) **C. A.**—*Musical Composition—Dramatic Piece—Right of Reservation—Notice of.*—To bring a musical composition within the Dramatic Copyright Act, 1833, it must have the characteristics of a dramatic piece. A song which does not require either dramatic effect or scenery is not a dramatic piece, although it is intended to be sung in costume on the stage. The owner of the right of representation of a published musical composition cannot sue for penalties for the unlicensed performance thereof, unless a notice that the right is reserved is printed on every copy as provided by the Musical Copyright Act, 1882; and this is also the case where the musical composition is also a dramatic piece.—*Fuller v. Blackpool Winter Gardens and Pavilion Co.*, L.R. [1895] 2 Q.B. 429.

(i.) **Ch. D.—Photograph—Author—Consideration—Fine Arts Copyright Act, 1862, ss. 1, 6.**—The "author" of a photograph is the person who controls the operations, and not the person who performs the manual operations under his directions. A photographic portrait taken on the terms that the photographer may sell copies, though without payment by the subject, is made for a "good and valuable consideration," within the proviso in sect. 1 of the Act; but where it is the intention that the negative shall be the property of the photographer, the photograph is not made "for or on behalf of the subject," and therefore the proviso does not apply. The words "any other person" in sect. 6, mean any person other than the author, and include the subject if he is not the author.—*Melville v. Mirror of Life Co.*, L.R. [1895] 2 Ch. 531.

(ii.) **Q. B. D.—Stock Exchange Prices—Lists of—Special Damage—Injunction.**—Under a contract made by the plaintiffs with the committee of the Stock Exchange the prices quoted on the Exchange were telegraphed to them hourly, and they telegraphed them to their subscribers who contracted not to disclose them to non-subscribers. They also printed the prices on sheets which were issued daily as a newspaper, and registered as copyright. *Held*, that the sheets were the subject of copyright. The defendants copied such sheets, and induced some of the plaintiffs' subscribers to supply them the information received from the plaintiffs contrary to their contract. *Held*, that they had infringed the plaintiffs' copyright; that they had no right to appropriate the information received by the plaintiffs from the Stock Exchange; that the obtaining of information from the plaintiffs' subscribers was a malicious interference with their business, and was actionable; and that no special damage need be shown.—*Exchange Telegraph Co. v. Gregory and Co.*, 73 L.T. 120.

### County Court:—

(iii.) **C. A.—Jurisdiction—Title to Easement—County Courts Act, 1888, ss. 56, 60, 116.**—Plaintiff sued for damage by reason of defendant's interference with the flow of water through a pipe under defendant's land. Defendant refused to admit plaintiff's title to the easement, and, while denying liability, brought 40s. into Court, which plaintiff took in satisfaction of his claim. The premises in respect of which the easement was claimed were of more than £50 annual value. *Held*, that the county court could not have tried the action, and that plaintiff was entitled to his costs.—*Howorth v. Sutcliffe*, L.R. [1895] 2 Q.B. 358.

### Criminal Law:—

(iv.) **C. C. R.—Aiding and Abetting—Felonious Wounding.**—Where one prisoner is charged with feloniously wounding, and another with aiding and abetting him, if the principal is convicted of unlawfully wounding, the second prisoner may be convicted of aiding and abetting him.—*Reg. v. Wgudby*, L.R. [1895] 2 Q.B. 482; 64 L.J. M.C. 251.

(v.) **C. C. R.—Larceny—Animus Furandi.**—The question of *animus furandi* is a question of fact for the jury. At a trial for larceny at quarter sessions the jury said that they had not agreed. The chairman asked if they believed the evidence for the prosecution, and, on their answering in the affirmative, directed a verdict of guilty to be entered. *Held*, that the conviction was bad, as there had been no finding by the jury that the prisoner had acted *animo furandi*.—*Reg. v. Farnborough*, L.R. [1895] 2 Q.B. 484.

**Deed :—**

- (i.) **Ch. D.—Construction—No Words of Inheritance—Will—Construction of.**—By settlement H. assigned to trustees, "all that share and interest to which the said H. is entitled under the will of E. H.," "to hold the said share and premises hereinbefore expressed to be hereby assigned unto the said A. and B., their executors, administrators, and assigns, upon the trusts hereinafter declared." H. was entitled in fee under the will to a share of real estate vested in trustees upon trusts which did not amount to a conversion, and to a share of personalty. *Held*, that as there were no words of inheritance in the settlement the trustees thereof were only entitled to an estate for their lives in the real estate. H., by will, gave his real and personal estate to the persons who would have been entitled thereto under the Statutes of Distribution, if he had died intestate. *Held*, that his heir-at-law was entitled to the real estate.—*Kühne v. Hudson*, 72 L.T. 892.

**Design :—**

- (ii.) **Ch. D.—Registration—Protection.**—Registration of a design does not protect the designer's idea, but only the actual design. A registered design for the sides of stoves consisting of a church window. B., adopting his idea, produced a design consisting of a church window of a different style of architecture, with different tracery. *Held*, that B.'s design was no infringement of A.'s.—*John Harper & Co. v. Wright and Butler Lamp Manufacturing Co.*, L.R. [1895] 2 Ch. 593.

**Easement :—**

- (iii.) **C. A.—Access of Air.**—In the absence of actual contract no one can claim a right to have the general current of air to his property over his neighbour's land kept uninterrupted. The defendant added sixteen feet to the height of a low building which bounded his property. The air in the plaintiff's yard, which adjoined, was thereby caused to stagnate, and the exhalations from his conveniences in the yard were not carried off. *Held*, that as such exhalations were not caused by the defendant, the stagnation of air in the plaintiff's yard caused by the defendant's new building was not actionable, either as an interference with a legal right or as a nuisance.—*Chastey v. Achland*, L.R. [1895] 2 Ch. 389; 64 L.J. Q.B. 523; 72 L.T. 845; 43 W.R. 627.
- (iv.) **Ch. D.—Light—Enjoyment for more than Nineteen Years—Inchoate Right—Prescription Act, ss. 3, 4.**—In an action to restrain interference with light and air by building on the site of old houses which had been pulled down nineteen years and nine months before action brought, *held*, that the defendants could only be restrained from building above the height of the old houses.—*Lord Buttersea v. Commissioners of Sewers*, 73 L.T. 116.

**Election :—**

- (v.) **Q. B. D.—Validity—Name on Ballot Paper of Person not a Candidate—Returning Officer—Liability—Ballot Act, 1872, s. 13.**—The name of a person who had been nominated as a candidate at an election of district councillors, but who had withdrawn his candidature, was by the mistake of the returning officer, printed on the ballot-papers, and he received a number of votes, sufficient, if given to the other candidates, to have influenced the result. *Held*, that the election was void. There is no general rule exempting a returning officer in such a case from the liability to pay costs for the consequences of his negligence.—*Wilson v. Ingham*, 72 L.T. 796; 43 W.R. 621.

**Gaming:—**

- (i.) **Q. B. D.**—*"Coupon Competition"*—*Lottery*—*Place for Betting*—*Advertisements*.—The defendants published a newspaper advertising a "Coupon Competition," offering a prize to any person correctly naming the first four horses in a certain race, the names to be sent in on coupons to be purchased by the competitors. They were prosecuted under the Lottery Acts; also under the Betting Act, 1853, for keeping an office for betting; and under the Betting Act, 1874, for publishing an advertisement inviting betting. *Held*, that the transaction did not amount to a lottery or betting within the meaning of the Acts.—*Stoddart v. Sagar*, L.R. [1895] 2 Q.B. 474; 64 L.J. M.C. 234.
- (ii.) **C. A.**—*Stock Exchange*—*Deposit of Cover*—*Gaming Contract*—*Right to Recover Deposit*.—The plaintiff deposited with the defendants, stock-brokers, securities, as cover in respect of transactions in stocks. The transactions resulted in a loss to the plaintiff. The jury found that the transactions were gambling transactions. *Held*, that the Gaming Act, 1845, sect. 18, did not prevent the plaintiff from recovering his securities.—*Strachan v. Universal Stock Exchange*, L.R. [1895] 2 Q.B. 329; 73 L.T. 6; 43 W.R. 611.

**Husband and Wife:—**

- (iii.) **H. L.**—*Desertion*—*Reasonable Cause*—*Law of Scotland*.—It is reasonable cause for a wife to leave her husband, that his conduct towards her has caused her mental distress sufficient to interfere with her restoration to health, and has used threats sufficient to cause apprehension of physical restraint, and has committed an act of violence against her. *Quare*, whether in an action of adherence by a husband, misconduct on his part short of cruelty, or other matrimonial offence, may be a ground for refusing relief.—*Mackenzie v. Mackenzie*, L.R. [1895] A.C. 384.
- (iv.) **H. L.**—*Divorce*—*Alimony*—*Income of Respondent*.—Upon an application for alimony it appeared that the respondent was partner in a business, and was entitled to draw £200 per month on account of profits, but could not draw more without his partner's consent. His share of the profits for several years had amounted to about £3,300, but he had only drawn £200 per month. *Held*, reversing the order of C. A. (see Vol. 19, p. 124, vi.) that the respondent should pay £600 a year in monthly instalments, in addition to £500 a year secured by marriage settlement.—*Hanbury v. Hanbury*, L.R. [1895] A.C. 417.
- (v.) **P. D.**—*Divorce*—*Unreasonable Delay*.—Where the Queen's Proctor intervenes against a divorce for the wife's adultery on the ground of unreasonable delay, the jury should be asked, When had the petitioner reason to suspect his wife's adultery? and when did he take action for a divorce?—*Brougham v. Brougham*, L.R. [1895] P. 288.
- (vi.) **P. D.**—*Nullity*—*Impotence*—*Sincerity*.—Petition by wife seven years after marriage for nullity on the ground of the husband's impotence. It appeared that the parties had separated owing to the impotence and that the wife had offered to return to cohabitation. *Held*, that this did not shew want of sincerity, and that the wife was entitled to a decree.—*L. v. B.*, L.R. [1895] P. 279.

**Infant:—**

- (vii.) **Ch. D.**—*Maintenance*—*Contingent Interest*—*Conveyancing Act, 1881, s. 43*.—Property was settled on trust for such members of a class (capable of increase) as should attain twenty-one. *Held*, that the accumulated income was divisible into as many shares as there were

members in existence; and that one share was payable to each adult, and one share applicable for the maintenance of each infant.—*Arnold v. Burt*, L.R. [1895] 2 Ch. 577.

**Insurance:—**

- (i.) **Ch. D. & C. A.—Life—Foreign Company—Construction of Policy.**—A domiciled Englishman effected a policy on his life for the benefit of his wife and children, through the English branch of an American insurance company. *Held*, that the policy must be construed according to the law of the place of domicile of the company.—*Crosland v. Wrigley*, 73 L.T. 60; 43 W.R. 572 and 678.
- (ii.) **P. C.—International Law—Japan—Consular Court—Jurisdiction.**—By virtue of the treaties with Japan a British subject has a right to require that proceedings taken against him by a Japanese shall be decided in the Consular Court; but such Court has no jurisdiction to entertain a counter-claim against a Japanese, though arising out of the same circumstances as those which gave rise to the action. The Japanese Government is in the same position with respect to proceedings in such Court as a Japanese subject. No Order in Council can confer on such Court a wider jurisdiction than that acquired by treaty.—*The Imperial Japanese Government v. Peninsular and Oriental Steam Navigation Co.*, 64 L.J. P.C. 107; 72 L.T. 88.

**Interpleader:—**

- (iii.) **Q. B. D.—Action for Commission—Claims by Different Persons.**—Two firms of auctioneers separately sued the defendant for commission in respect of the sale of the same house. *Held*, that the defendant was not entitled to relief by way of interpleader.—*Greathorex v. Shackle*, L.R. [1895] 2 Q.B. 249; 64 L.J. Q.B. 634; 72 L.T. 897.

**Justices:—**

- (iv.) **Q. B. D.—Practice—Closing Order—Time—Public Health (London) Act, 1891, s. 5, sub-s. 9—Summary Jurisdiction Act, 1848, s. 11.**—A conviction for acting contrary to a closing order which imposes a fine in respect of every day during a period of more than six months is bad.—*Reg. v. Slade*, L.R. [1895] 2 Q.B. 247; 64 L.J. M.C. 232.

**Landlord and Tenant:—**

- (v.) **C. A.—Ejectment—Forfeiture—Mortgage—Common Law Procedure Acts, 1852, s. 210; 1860, s. 1—The mortgagee of a lease by sub-demise is entitled to relief under the section first mentioned against forfeiture for non-payment of rent, unless a right in some third party has accrued between the date of the judgment and the application for relief.**—*Newbolt v. Bingham*, 72 L.T. 852.
- (vi.) **Ch. D.—Forfeiture for Non-Payment of Rent—Relief—Bankruptcy—Assignment of Lease by Trustee.**—Relief in case of forfeiture for non-payment of rent is given not only when there have been ejectment proceedings, but when the landlord has recovered possession by peaceable re-entry. The right of the lessee to relief vests in his trustee in bankruptcy, and may be assigned by him to a purchaser.—*Howard v. Fanshawe*, L.R. [1895] 2 Ch. 581; 64 L.J. Ch. 666, 73 L.T. 77; 43 W.R. 645.
- (vii.) **C. A.—Furnished Lodgings—Fitness for Habitation.**—On the letting of furnished lodgings there is no implied agreement that the lodgings shall continue fit for habitation during the term.—*Sarson v. Roberts*, L.R. [1895] 2 Q.B. 395; 43 W.R. 690.

- (i.) **C. A.**—*Right of Distress—Suspension of.*—The fact that the landlord has taken a bill of exchange from his tenant for rent due is some evidence of an agreement to suspend his right of distress during the currency of the bill.—*Palmer v. Bradley*, L.R. [1895] 2 Q.B. 405.
- (ii) **C. A.**—*Right of Re-entry—Waiver—Distress for Rent.*—A distress for rent does not amount to a waiver of the landlord's right of re-entry for non-payment of rent so as to prevent him from suing to recover possession under the Common Law Procedure Act, 1852, sect. 210.—*Thomas v. Lulham*, L.R. [1895] 2 Q.B. 400; 43 W.R. 689.
- (iii.) **Q. B. D.**—*Tenants' Fixtures—Removal of after Tenancy—Measure of Damages.*—The tenant of a public-house whose term had expired, but who remained in possession after his landlord had required him to give up possession, removed fixtures after a writ of possession had been served on him, but before he had actually given up possession. It was not intended to use the premises in future as a public-house. *Held*, that the removal was wrongful, and that the measure of damages was the value of the fixtures as chattels, and not their value as fixtures to tenant intending to carry on the business.—*Barff v. Probyn*, 64 L.J. Q.B. 557; 73 L.T. 118.

#### Lands Clauses Act:—

- (iv.) **Ch. D.**—*Part of a House.*—Part of a house was used for the purposes of a manufactory, and part was let to a tenant and not used for the purposes of the manufactory. *Held*, that the part last mentioned was part of a manufactory, and that a railway company proposing to take it was bound under sect. 92 of the Act to take the whole manufactory.—*Brook v. M.S. & L.R.*, L.R. [1895] 2 Ch. 571; 63 W.R. 698.

#### Lease:—

- (v.) **C. A.**—*Covenant to Repair—Damages.*—Where an underlessee has notice that there is a superior landlord, the intermediate lessor's liability to that landlord must be taken into account in estimating the damages for breach of a covenant to keep in repair; and the cost of putting the property in repair at the end of the term may properly be considered.—*Ebbetts v. Conquest*, L.R. [1895] 2 Ch. 237; 73 L.T. 69.

#### Libel:—

- (vi.) **Q. B. D.**—*Publication of Public Information.*—A trade protection society published information of a registered deed of inspectorship as set out in an official office extract. The information was inaccurate, as the assets were set forth as "nil," whereas there were in fact assets sufficient to pay all creditors in full. The debtor sued for libel. *Held*, that he could recover, on the ground that a person who publishes information for his own profit is responsible for its accuracy.—*Reis v. Perry*, 64 L.J. Q.B. 566; 43 W.R. 648.
- (vii.) **C. A.**—*Privilege.*—A communication relating to state matters made by one officer of state to another in the course of his official duties is absolutely privileged.—*Chatterton v. Secretary of State for India*, L.R. [1895] 2 Q.B. 189; 72 L.T. 858.

#### Licensing:—

- (viii.) **Q. B. D.**—*Off-licence—Place of Sale.*—A brewer having an off-licence sent beer round in jars to houses in the neighbourhood. The jars were not marked as being appropriated to any particular customer, but were sent in pursuance of orders previously given. The carmen left the jars and collected the price subsequently. *Held*, that the place

of sale was at the house of the customer, and not on the licensed premises, and that an offence had been committed.—*Pletts v. Campbell*, L.R. [1895] 2 Q.B. 229; 64 L.J. M.C. 225; 43 W.R. 634.

### Limitations :—

- (i.) **C. A.**—*Partnership Accounts—Concealed Fraud.*—A father and two sons, A. and B., commenced business in 1856 as partners without articles. In 1870 the terms of partnership were altered verbally. In 1886 the father died, and the sons continued the business. A. died in 1893, and his widow claimed an account from 1886. B. claimed that the account should be taken from 1870, and proved that between 1870 and 1886 A. had misappropriated funds by concealed fraud. A.'s widow set up the statute. There had never been settled accounts. *Held*, that the Statute did not apply, and that if it did apply, the concealed fraud ousted it. *Held*, also, that the fact that the books might have been investigated did not prevent the doctrine of concealed fraud from applying.—*Betjemann v. Betjemann*, L.R. [1895] 2 Ch. 474; 64 L.J. Ch. 641; 73 L.T. 2.
- (ii.) **H. L.**—*Receipt by Agent—Fraud of Agent—Claim Principal—Trustee Act, 1888, s. 8.*—Decision of C. A. (see Vol. 20, p. 89, iv.) affirmed.—*Thorne v. Heard*, L.R. [1895] A.C. 495; 64 L.J. Ch. 652.

### Local Government :—

- (iii.) **Ch. D.**—*Building—Incombustible Material.*—A building, the walls of which were made of very thin sheets of iron with layers of felt between, fixed to a wooden framework, does not satisfy a bye-law requiring all new structures to have walls of brick or stone "or other hard and incombustible material."—*Bailey v. Cuckfield Union Rural District Committee*, 64 L.J. Q.B. 571; 72 L.T. 775; 43 W.R. 663.
- (iv.) **Q. B. D.**—*District Council—Treasurer—Local Government Act, 1894, s. 81, sub-s. 1.*—The office of treasurer to a district council is not one in respect of which the remedy of *quo warrants* is applicable.—*Reg. v. Wells*, 43 W.R. 576.
- (v.) **Q. B. D.**—*General District Rate—Non-payment—Proceedings—Evidence.*—When a person is summoned for non-payment of a general district rate in respect of his premises, he is entitled to call evidence to shew that the premises are not situated in the area for which the rate is made.—*Baglan Bay Tin Plate Co. v. John*, 72 L.T. 805.
- (vi.) **Q. B. D.**—*Local Authority—Contract—Penalty.*—The enactment contained in the Public Health Act, 1875, sect. 174, sub-sect. 2, is obligatory, and not merely directory, so that a contract which does not specify any pecuniary penalty cannot be enforced against an urban authority.—*British Insulated Wire Co. v. Prescott Urban District Council*, L.R. [1895] 2 Q.B. 463.

### Married Woman :—

- (vii.) **Ch. D.**—*Release of Reversionary Interest—Election.*—A covenant, by a woman married in 1873, to release a reversionary life interest under her marriage settlement, is not binding even when contained in a separation deed; and the receipt by her of an annuity under the deed does not raise any case of election.—*Harle v. Jarman*, L.R. [1895] 2 Ch. 319; 73 L.T. 20; 43 W.R. 618.
- (viii.) **Ch. D.**—*Reversionary Interest—Deed Acknowledged—Mair's Act.*—Personalty was vested in trustees upon trust to pay income to S. until he should become bankrupt, and then to apply it in their discretion for the benefit of S. or any of his children, born or to be born. S.



became bankrupt in 1861, having four children. In 1862 the children executed a deed directing the trustees to pay the income to S. or his wife at their discretion, and after the death of the survivor to hold the fund in trust for the children. *Held*, that though this deed could not put an end to the discretionary trust so far as after-born children were concerned, it did terminate the interests of the four children under the existing will and did create new interests, so that M., one of the children, could bind her interests thereunder by deed acknowledged under Malin's Act.—*Capes v. Ferrand*, 73 L.T. 17.

- (i.) **C. A.**—*Separate Estate—Restraint—Judgment—Income Due but not Paid*.—Income of the separate estate of a married woman as to which she is restrained from anticipation, cannot be made available in execution upon a judgment against her if it has not been paid at the date of the judgment, even though it had then accrued due.—*Loftus v. Heriot*, L.R. [1895] 2 Q.B. 212.

### Master and Servant:—

- (ii.) **C. A.**—*Information Acquired in Service—Duty of Servant*.—Decision of Q. B. D. (see Vol. 20, p. 111, iv.) affirmed.—*Robb v. Green*, L.R. [1895] 2 Q.B. 315; 64 L.J. Q.B. 593; 73 L.T. 15.
- (iii.) **C. A.**—*Wrongful Dismissal—Dissolution of Partnership*.—The defendants, four partners, agreed to employ the plaintiff as manager for a certain term. Before the end of the term two of the partners retired. The other two were willing to continue to employ the plaintiff. *Held*, that the dissolution of the partnership amounted to a wrongful dismissal of the plaintiff, but that he was only entitled to nominal damages.—*Brace v. Calder*, L.R. [1895] 2 Q.B. 253; 64 L.J. Q.B. 582; 72 L.T. 829.

### Metropolis Management:—

- (iv.) **Q. B. D.**—*Buildings—Land laid out as a Street for Foot Traffic—Metropolis Management Act, 1862, ss. 7, 8*.—D. began to build two blocks of artisans' dwellings. There was a space between them for access to the different tenements, which had separate access thereto, and it was shut off from the street by gates. *Held*, that the magistrate could properly find that such space was not a "road, passage, or way laid out as a street for foot traffic."—*London County Council v. Davis*, 64 L.J. M.C. 212; 43 W.R. 574.
- (v.) **C. A.**—*Building—Line of—Certificate of Architect—Metropolis Management Act, 1862, s. 75*.—When a house is built at the corner of two streets the superintending architect of the London County Council must decide in which street it is situate, and the magistrate, before whom proceedings for its demolition as being beyond the building line taken, cannot review his certificate.—*Allen v. London County Council*, 64 L.J. M.C. 228; 73 L.T. 101; 42 W.R. 674.
- (vi.) **C. A.**—*"Building, Structure, or Erection"—Metropolis Management Act, 1862, s. 75*.—Decision of Q. B. D. (see Vol. 20, p. 112, i.) affirmed.—*Lavy v. London County Council*, 73 L.T. 112; 43 W.R. 677.
- (vii.) **C. A. & Q. B. D.**—*Drain—Sewer—Liability to Repair—Wrongful Act of Builder—Metropolis Management Act, 1855, s. 250*.—A builder built four houses, which he, contrary to the directions of the sanitary authority, caused to be drained into one drain. The purchaser of the premises in which the drain was situate was called upon to repair the same. *Held*, that he was not estopped from alleging that the drain was a sewer, and consequently repairable by the sanitary authority.—*Kershaw v. Taylor*, L.R. [1895] 2 Q.B. 208 & 471; 64 L.J. M.C. 222 & 245.

- (i.) **C. A.**—*New Street—Paving—Apportionment—Metropolis Management Act, 1862, s. 77.*—In apportioning the cost of paving a new street, the local authority is not bound to charge the frontagers rateably, *inter se* according to frontages or otherwise, and the apportionment cannot be questioned in the absence of *mala fides*.—*M.D.N. v. Fulham Vestry*, L.R. [1895] 2 Q.B. 443.
- (ii.) **C. A.**—*New Street—Repairs—Apportionment—Metropolis Management Act, 1865, s. 12.*—A turnpike road which was disturnpiked in 1865, and which up to that date was in the charge of turnpike trustees, and the carriage-way of which was after that date repaired by the vestry, *held*, to be a "new street" in spite of the latter section, being a street in the popular acceptance of the term. An apportionment of expenses under the earlier Act is conclusive, although it is unequal in the amount it imposes upon the same kind of property, if it does not deal with matters outside the jurisdiction of the vestry.—*Davis v. Greenwich District Board of Works*, L.R. [1895] 2 Q.B. 219; 72 L.T. 674.
- (iii.) **Q. B. D.**—*Sewer—Powers of County Council—Order to Vestry.*—The county council has no power to order a vestry to make a sewer according to a specified plan for the drainage of houses which are being drained directly into the Thames.—*Reg. v. St. George's, Hanover Square Vestry*, L.R. [1895] 2 Q.B. 275; 73 L.T. 62.

### Municipal Corporation:—

- (iv.) **Q. B. D.**—*Election—Name of Candidate Misspelt*—A candidate's name was "Miller." On the burgess-rolle and the nomination papers it was spelt "Millar." *Held*, that the misspelling did not invalidate the nomination papers.—*Miller v. Everton*, 72 L.T. 838.
- (v.) **Q. B. D.**—*Election of Aldermen—Delivery of Voting Papers—Municipal Corporations Act, 1882, s. 60, sub-s. 4.*—At a meeting of a town council for the election of aldermen, the chairman requested the town clerk to collect the voting papers and deliver them to him. *Held*, that this was a proper method of delivering the voting papers.—*Baxter v. Spencer*, 64 L.J. Q.B. 644; 72 L.T. 838.

### Patent:—

- (vi.) **P. C.**—*Improvements on old Machine.*—Where a patent is granted for improvements on an old machine the patentee is limited strictly to his specification, and another person's improvements which have the same object, but are not effected in exactly the same manner, are no infringement.—*Brown v. Jackson*, L.R. [1895] A.C. 446.
- (vii.) **P. C.**—*Prolongation.*—It is a strong, though not an insuperable objection to the prolongation of a patent, that several foreign patents for the same invention have expired, and that the English patent is the only one surviving.—*In re Carl Pieper's Patent*, 72 L.T. 782.
- (viii.) **P. C.**—*Prolongation.*—An extension of a patent will not be granted to assignees when the inventor has no legitimate interest in making the application himself.—*In re the Bower-Barff Patent*, 73 L.T. 36.
- (ix.) **Ch. D.**—*Practice—Costs—Taxation—Particulars of Objection—Certificate*—Sect. 29, sub-sect. 6, of the Patents, &c., Act, 1883, requiring the certificate of the Court as to the propriety of particulars of objection as a condition precedent to allowing the costs thereof, is not confined to a case where an action has been tried.—*Middleton v. Bradley*, 73 L.T. 81; 43 W.R. 684.

**Pedlar :—**

- (i.) **Q. B. D.**—*Market—Exemption from Tolls—Pedlars Acts, 1871, ss. 3, 6; 1881, s. 2.*—A pedlar is not exempt from market tolls when he offers for sale within the market potatoes in a cart drawn by a horse.—*Woolwich Local Board v. Gardiner*, 64 L.J. M.C. 248.

**Poor Law :—**

- (ii.) **H. L.**—*Guardians—Limitation of Time for Payment of Debt—Costs—Taxation—Application to Tax.*—Decision of C. A. (see Vol. 20, p. 82, i.) affirmed.—*M.R. v. Edmonton Guardians*, L.R. [1 95] A.C. 485; 72 L.T. 811.
- (iii.) **Q. B. D.**—*Rating—Beneficial Occupation.*—Under a private Act which gave permissive powers the appellants purchased a mansion and land for a public park, and maintained such park for the public use. *Held*, that there was a beneficial occupation, and that the appellants were rateable. Former valuations and assessments were no evidence of the beneficial value, nor were the cost of acquiring and laying out the park.—*London County Council v. Lambeth Churchwardens*, 64 L.J. M.C. 252.

**Practice :—**

- (iv.) **C. A.**—*Action for Costs—Order of Probate Division.*—An action can be brought in the Queen's Bench Division to recover taxed costs due under an order of the Probate Division, and final judgment can be signed under Order xiv.—*Norton v. Gregory*, 73 L.T. 10.
- (v.) **C. A.**—*Adding Parties—Deposit of Freight—Action for Freight.*—Cargo was warehoused by the shipowner with notice of a lien for freight under sect. 493 of the Merchant Shipping Act, 1894. The consignees, who were only agents for sale, deposited the freight with the warehouseman, with a notice to retain it under sect 496. The shipowner sued the consignees for a declaration of title to the money. *Held*, that the shippers should be added as defendants that they might counter-claim for damages for short delivery and injury to cargo.—*Montgomery v. Foy, Morgan & Co.*, L.R. [1895] 2 Q.B. 321; 73 L.T. 12; 43 W.R. 691.
- (vi.) **Ch. D.**—*Company—Receiver and Manager—Continuance—Form of Order.*—Where there has been a receiver and manager appointed on an interlocutory order in a debenture-holder's action, as receiver generally and as manager till a fixed date, the judgment should merely extend the time during which the receiver may act as manager.—*Davies v. Vale of Nwesham Preserves Co.*, 43 W.R. 646.
- (vii.) **C. A.**—*Consent Order—Power to Set Aside.*—The Court has jurisdiction to set aside a consent order in an action on the grounds on which it would set aside an agreement between the parties.—*Huddersfield Banking Co. v. Lister & Son*, L.R. [1895] 2 Ch. 273; 64 L.J. Ch. 523; 72 L.T. 708; 43 W.R. 567.
- (viii.) **C. A.**—*Commercial Causes—Evidence.*—The Court established for the trial of commercial causes is bound by the technical rules of evidence, and must administer the law in the ordinary way.—*Baerlein & Co. v. Chartered Mercantile Bank of India, London, and China*, L.R. [1895] 2 Ch. 488; 72 L.T. 850; 43 W.R. 692.
- (ix.) **Ch. D.**—*Costs—Witnesses' Expenses—R. S. C. 1883, O. lxx., r. 27 (9), (20), (29), (37), (38)—Photographs.*—The costs of witnesses subpoenaed, but not called, are within the taxing master's discretion, which he must exercise under the order mentioned, without reference to scales and rules before the Judicature Act. *Semble*, that the costs of a photographer called merely to prove photographs should not be allowed

unless notice to admit his proof has been given and the admission has been refused.—*East Stonehouse Local Board v. Victoria Brewery Co.*, L.R. [1895] 2 Ch. 514; 73 L.T. 54; 43 W.R. 585.

- (i.) **P. D.**—*Divorce—Suing in Formâ Pauperis—Divorce Act, 1851, s. 51.*—The practice is to allow a husband suing for divorce in *formâ pauperis* only his or his solicitor's out-of-pocket costs, including those of the certificate, and in the latter case a reasonable sum for office expenses. *Semble*, that a barrister or solicitor may receive fees from such pauper petitioner, and that a solicitor, not assigned to but employed by him, may sue him on a retainer, and that the respondent or co-respondent if successful can obtain an order against him for full costs, and that there is no clear rule as to obtaining security for costs from such a petitioner.—*Richardson v. Richardson*, L.R. [1895] P. 276; 64 L.J. P. 93.
- (ii.) **Ch. D.**—*Interlocutory Motion—Delivery of Documents—Subject of Action.*—The defendant was in the employment of the plaintiffs, who were carrying out a contract for a railway company. He entered the measurements of work done by his employers. During part of his time he also acted in some capacity for the company, and received part of his salary from them. He left the plaintiffs' service of his own accord and carried away the documents containing such entries. The plaintiffs sued for their recovery. *Held*, that his removal of them was improper, and that he could be ordered on interlocutory motion to restore them.—*Whitwam v. Moss*, 73 L.T. 57.
- (iii.) **C. A.**—*Liverpool Court of Passage.—Order xiv. of the R. S. C. is not* "applicable to" the Passage Court, as that Court has no machinery for administering the order.—*E. p. Spelman*, L.R. [1895] 2 Q.B. 174; 64 L.J. Q.B. 640; 43 W.R. 609.
- (iv.) **C. A.**—*Mortgage Debt—Receiver—Special Endorsement—R. S. C., 1883, O. xiv.*—The fact that a mortgagee has appointed a receiver does not prevent him from applying for judgment under Order xiv. when he sues for the debt and interest, but in a case where there seemed to be a question as to the state of the account, leave to defend was given.—*Lynde v. Waithman*, L.R. [1895] 2 Q.B. 186; 72 L.T. 857.
- (v.) **Ch. D.**—*Originating Summons—Foreclosure—Debenture-holder.*—A foreclosure order can be made at the instance of a debenture-holder on an originating summons.—*Oldrey v. Union Works*, 72 L.T. 627.
- (vi.) **Ch. D.**—*Payment Out—Petition—Creditor's Action.*—Upon further consideration in a creditor's action for distribution of funds paid in under the Trustee Relief Act, an order will be made for payment out to the persons found entitled without a petition.—*Pullen v. Isaacs*, 72 L.T. 834.
- (vii.) **Ch. D.**—*Petition—Costs—R. S. C., 1883, O. lv., r. 2 (1).*—A petition was presented for payment out of Court of part of a sum of over £1000 paid in by a railway company, and for the transfer of the balance to the credit of an action in which an order had been made declaring the rights of the parties interested. *Held*, that the company must pay the costs, not being greater than those properly incurred on a summons adjourned to the judge in chambers and attended by counsel.—*In re Lancashire and Yorkshire Railway; Slater v. Slater*, 64 L.J. Ch. 688; 72 L.T. 627.
- (viii.) **C. A.**—*Service out of Jurisdiction—Domiciled Scotchman—Business in England under Firm Name.*—Rule 11 of Order xlviii., A., does not authorise service of a writ on a domiciled Scotchman who carries on business in England under a firm name, but proceedings must be taken under Order xi. The object of the former rule is not to enlarge

- the jurisdiction of the Court against foreigners; and a person can only be sued under his trade name in connection with the business carried on under that name.—*MacIver v. Burns*, 64 L.J. Ch. 681; 73 L.T. 39.
- (i.) **C. A.**—*Suspension of Injunction—Extension of Time—Court to apply to.*—The Court of Appeal, varying a judgment, granted an injunction, but suspended its operation for a certain time. *Held*, that an application for its further suspension might be made to the judge of the Court below.—*Shelfer v. City of London Electric Lighting Co.*, L.R. [1895] 2 Ch. 888; 73 L.T. 42.
- (ii.) **C. A.**—*Vesting Order—Trustee Refusing to Transfer—Time—Costs—Trustee Act, 1893, ss. 35 (ii.), (d), 38.*—Decision of Ch. D. (*see* Vol. 20, p. 84, ii.) affirmed.—*In re Knox's Trusts*, L.R. [1895] 2 Ch. 483; 72 L.T. 761.

### Prescription:—

- (iii.) **Ch. D.**—*Easement—Opening River Locks.*—The defendants had for many years exercised the uninterrupted right in times of flood of opening the gates of three locks on a river which belonged to the plaintiff and his predecessors in title. The right was traced to a deed of 1689, by which the plaintiff's predecessor in title took from the Corporation a conveyance of the site of one of the locks. The plaintiff had no notice, actual or constructive, of this deed. *Held*, that the defendants' claim to open the locks could be supported on the presumption of a lost grant, apart from the said deed, which was bad as a grant of an easement in gross. *Held*, also, that the *prima facie* prescription from uninterrupted possession was not defeated by the said deed.—*Simpson v. Corporation of Godmanchester*, 73 L.T. 90.

### Principal and Surety:—

- (iv.) **H. L.**—*Scotch Law—Guaranty.*—An undertaking by the defenders to give, when required, a guaranty for the repayment of money to be lent by the pursuer is a good "cautionary obligation" within the meaning of the Mercantile Law (Scotland) Amendment Act, 1856, s. 6, and is binding on the defenders as a direct obligation.—*Wallace v. Gibson*, L.R. [1895] A.C. 354.

### Railway:—

- (v.) **C. A.**—*Luggage—Servant—Property of Employer.*—The plaintiff's servant travelled by the defendants' line with a portmanteau, which was accepted as his personal luggage. It contained his livery, which was the plaintiff's property. The livery was destroyed through an act of misfeasance of one of the defendants' porters. *Held*, that the defendants were liable to the plaintiff.—*Meux v. G.E.R.*, L.R. [1895] 2 Q.B. 387; 43 W.R. 680.
- (vi.) **C. A.**—*Receiver and Manager—Expenses of Promoting Bill.*—Decision of Ch. D. (*see* Vol. 20, p. 117, ii.) affirmed.—*In re Mersey Railway Co.*, 64 L.J. Ch. 625; 72 L.T. 735.
- (vii.) **H. L.**—*Special Rate—Forwarding Traffic of another Company—Duty towards Public.*—Decision of C. A. (*see* Vol. 19, p. 56, v.) reversed.—*Davis v. Taff Vale Railway Co.*, 72 L.T. 632.

### Revenue:—

- (viii.) **Q. B. D.**—*Account Duty—Voluntary Settlement—Customs, &c., Acts, 1861, s. 88, sub-s. 2(a); 1869, s. 11.*—Where partnership articles provide that on the death of a partner his share shall be sold to the surviving

partner, subject to an annuity to his widow, payable out of the gross profits, such annuity is property passing under a voluntary settlement, and is part of the deceased partner's estate, and account duty is payable in respect thereof.—*Attorney-General v. Wendt*, 43 W.R. 701.

- (i.) **C. A.**—*Account Duty—Marriage Settlement—Children of Former Marriage—Voluntary Disposition—Customs and Inland Revenue Acts*, 1881, s. 38, sub-s. 2; 1889, s. 11.—Decision of Q. B. D. (see Vol. 20, p. 54, i.) reversed.—*Attorney-General v. Jacobs-Smith*, L.R. [1895] 2 Q.B. 341; 64 L.J. Q.B. 605; 72 L.T. 714; 43 W.R. 657.
- (ii.) **Q. B. D.**—*Inhabited House Duty—Exemptions—"Charity School"*.—A college, which is partly kept up by endowments and partly by fees paid by the students, is not entitled to exemption as a "charity school" under 48 Geo. 3, c. 55, Sched. B.—*Southwell v. Governors of Royal Holloway College*, L.R. [1895] 2 Q.B. 487.
- (iii.) **Ch. D.**—*Legacy Duty—Personal Estate to be laid out in Land—Reversion to Legatee on his own Death—Legacy Duty Act*, 1796, ss. 12, 19—*Customs, &c. Act*, 1881, s. 41.—T., who died in 1884, devised his real estate to B. for life, remainder to his first and other sons in tail male, remainder to B. in fee, and bequeathed his personalty to be laid out in land to be settled to like uses. On B. becoming tenant for life legacy duty was paid at one per cent. on his life interest in the personalty not invested in land. He died in 1893 without male issue, having directed that all money liable to be laid out in land under T.'s will to which he was absolutely entitled should be considered as part of his personal estate. His executors paid three per cent. affidavit duty on his personal estate. *Held*, that on his death without issue male, B. "began to enjoy the benefit" of the capital of T.'s personal estate, and that legacy duty at one per cent. was payable thereon.—*Lord Kenlis v. Hodgson*, L.R. [1895] 2 Ch. 458; 69 L.J. Ch. 485; 72 L.T. 866.
- (iv.) **Ch. D.**—*Legacy Duty—Annuity—Term of Years—Direction to Accumulate*.—Lands were devised to trustees for a term of 500 years, and subject thereto in strict settlement, the tenant for life being A. The trusts of the term were to pay an annuity to the person entitled under the settlement, and subject thereto to accumulate the rents and profits for twenty-one years, and invest the same in real estate to be settled to the same uses, and after the determination of the term of twenty-one years, to pay the rents and profits to the person entitled under the settlement. *Held*, that during the twenty-one years A.'s annuity was a mere charge on the estate of another, and that legacy and not succession duty was therefore payable in respect thereof.—*De Hoghton v. De Hoghton*, L.R. [1895] 2 Ch. 517; 64 L.J. Ch. 590; 73 L.T. 27; 44 W.R. 630.
- (v.) **Q. B. D.**—*Probate Duty—"Voluntary Transfer"—Customs and Inland Revenue Acts*, 1881, s. 38, sub-s. (2) (b); 1889, s. 11, sub-s. (1).—A. and B. purchased stock in their joint names out of monies provided by them in equal shares, on the express agreement that the survivor should be entitled to the whole stock. *Held*, on the death of A., that the purchase of half of the stock was a "voluntary transfer" of such stock by A. to himself and B., although there was an agreement that B. should do the like.—*Attorney-General v. Ellis*, L.R. [1895] 2 Q.B. 466.
- (vi.) **Q. B. D.**—*Probate Duty—Foreign Mortgage Securities*.—Where a testator, domiciled in England and possessing mortgage securities on foreign lands, bequeaths his residue as to part upon trust for his wife, and she dies while the estate is being administered, and bequeaths her personal estate upon trust for sale, such part thereof as consists of

foreign mortgage securities remains a foreign asset, and is not subject to probate duty under the Customs, &c., Act, 1881.—*Attorney-General v. Lord Sudeley*, 43 W.R. 700.

- (i.) **C. A. & Q. B. D.**—*Stamp—Marketable Security—Stamp Act, 1891, ss. 38, 82, sub-s. 1 (b)*, s. 122.—An American railway company, as security for a loan, handed to the lender, through their English agents, an instrument by which they promised for value received to pay the amount named twelve months after date. It stated that it was one of a series and was secured by a deposit of gold bonds. The instruments were dealt in upon the Stock Exchange, but not officially quoted. *Held*, that it was a marketable security, and not only a promissory note, and was chargeable with stamp duty as a marketable security.—*Brown, Shipley and Co. v. Commissioners of Inland Revenue*, L.R. [1895] 2 Q.B. 240; 64 L.J. M.C. 209 & 241.

### Sale of Goods:—

- (ii.) **H. L.**—*Hire-Purchase—Contract—Pledge—Factors Act, 1889, ss. 2, 9.*—Decision of C. A. (see Vol. 19, p. 139, iv.) reversed.—*Helby v. Matthews*, L.R. [1895] A.C. 471; 43 W.R. 561.
- (iii.) **C. A.**—*Hire Purchase—Fraudulent Sale—Conviction—Reverting of Title—Sale of Goods Act, 1893, s. 24.*—Decision of Q. B. D. (see Vol. 20, p. 87, iv.) reversed.—*Payne v. Wilson*, 73 L.T. 12; 43 W.R. 657.
- (iv.) **Ch. D.**—*Pledges—Person in Possession—Sale of Goods Act, 1893, s. 25, sub-s. 1.*—A merchant sold goods in the hands of a warehouseman, and afterwards pledged the goods to the warehouseman for advances made in good faith without notice of the sale. *Held*, that the pledge conferred no title to the goods.—*Nicholson v. Harper*, L.R. [1895] 2 Ch. 415; 64 L.J. Ch. 672; 73 L.T. 19.

### Scotch Law:—

- (v.) **H. L.**—*Entail—Direction to Entail on Heirs of another Estate—Disentail of that Estate.*—In accordance with the directions of a trust-disposition and settlement the trustees thereof disposed of the estate of N. to X., "who is the heir in possession of the estate of H.," and, failing him, "then to the heirs substitute in the said entail of H." The entail of H. was broken by the successor of X. *Held*, that the disposition of the estate of N. under the entail by the trustees was operative, although the entail of H. was no longer in existence.—*Inglis v. Gillanders*, L.R. [1895] A.C. 507.
- (vi.) **H. L.**—*Husband and Wife—Marriage Contract—Husband's Creditors.*—By ante-nuptial contract of marriage the husband bound himself to pay during his life an annuity to his wife "to be applied by her towards the expenses of my household and establishment." The annuity was secured on heritable property, and declared to be the wife's separate estate, free of the *jus mariti*. *Held*, that the wife could not claim the annuity against the husband's creditors.—*Birkett v. Purdon*, L.R. [1895] A.C. 371.

### Settled Land:—

- (vii.) **C. A.**—*Improvements—Effectuated by Tenant for Life—Reimbursement of.*—By the combined effect of sect. 26 of the Settled Land Act, 1882, and sect. 15 of the Settled Land Act, 1890, the Court may order capital money to be applied in reimbursing a tenant for life for improvements already effectuated and paid for. But where no scheme was sanctioned before the execution of the work, the Court will regard the improvements more critically and carefully.—*In re Tucker's Settled Estates*, L.R. [1895] 2 Ch. 468; 64 L.J. Ch. 513; 72 L.T. 619; 43 W.R. 581.

- (i.) **Ch. D.**—*Money Settled to be laid out in Land—Powers of Tenant for Life*—*Settled Land Act, 1882, s. 33.*—The tenant for life has the same powers over money in the hands of trustees to be laid out in land as he would have over the land itself, and he can direct how the money shall be applied or invested as capital money.—*Pearson v. Pearson*, 64 L.J. Ch. 606.
- (ii.) **C. A.**—*Trust for Sale—Building Lease.*—Land was devised upon trust for sale. The trustees had power, until sale, to let "upon such terms and conditions as they may consider most advisable." It appeared that it would be most advantageous to let the land on building lease by auction, and then sell it subject to the lease. *Held*, that such procedure might be sanctioned, subject to evidence that the rent under the building lease would not be less than the present net rental.—*James v. Gregory*, 64 L.J. Ch. 686; 73 L.T. 1.

**Ship:—**

- (iii.) **C. A.**—*Bill of Lading—Exemption of Shipowner's Liability—Negligence of Stevedore*—Goods were shipped under a bill of lading which exempted the shipowners from liability for any negligence of the "pilot, master, mariners, or other servants of the shipowners in navigating the ship or otherwise." The stevedore employed by the shipowners stowed the goods negligently, and they were damaged. *Held*, that the shipowner was not liable.—*Baerselman v. Bailey*, L.R. [1895] 2 Q.B. 301; 72 L.T. 677; 43 W.R. 593.
- (iv) **C. A.**—*Bill of Lading—Exemptions—Negligence of Servant—Due Diligence of Owner.*—A bill of lading exempted the shipowner from liability for loss caused by the negligence of his servants in the navigation or management of the ship, provided that he had exercised due diligence in making her seaworthy. The carpenter employed by the shipowner failed to see that she was seaworthy when she sailed, and the goods were damaged owing to her unseaworthiness. *Held*, that the shipowner had not exercised due diligence, and was not relieved from liability.—*Dobell and Co. v. Steamship Rossmore Co.*, L.R. [1895] 2 Q.B. 408; 73 L.T. 74.
- (v.) **Q. B. D.**—*Charter-party—Deviation.*—By a charter-party, reciting that a ship was of a capacity of about 125 tons, it was agreed that she should load "a cargo or estimated quantity of 470 quarters of wheat," being in fact 102 tons, at R. and discharge it at G. There was the usual exception of sea perils, and liberty to call at any ports. She loaded the wheat and took in further cargo at M., which is in the same port as R., which she discharged at P. in the same port as G., and in going to G. sprung a leak whereby the wheat was damaged. *Held*, that the charter-party, though the word "cargo" was used, did not amount to a hiring of the whole ship, and that the liberty to call at any ports included liberty to call to take in and discharge cargo; and further, that the word "ports" was not used in a technical sense, so that there had been no deviation in going to M. and P.—*Caffin v. Aldridge*, L.R. [1895] 2 Q.B. 366.
- (vi.) **Q. B. D.**—*Charter-party—Refusal to Sign Bills of Lading—Penalty.*—A charter-party provided that the captain should sign bills of lading within twenty-four hours or pay £10 for every day's delay as and for liquidated damages. *Held*, that this was a penalty and not liquidated damages.—*Rayner v. Rederiaktiebolaget Condor*, L.R. [1895] 2 Q.B. 289; 64 L.J. Q.B. 540; 73 L.T. 96.
- (vii.) **C. A.**—*Charter-party—Delivery of Spars.*—A charter-party for the carriage of spars provided for their discharge into lighters. *Held*, that the consignees were bound to have men in the lighters to assist in



getting the spars into them, and that they were liable for demurrage for the delay caused by their failure to provide such men.—*Petersen v. Freebody and Co.*, L.R. [1895] 2 Q.B. 294.

- (i.) **C. A. & Q. B. D.**—*Charter-party—Liability of Owner—Bill of Lading.*—A charter-party provided that the captain should be the agent of the charterer for all purposes, and should act as such in signing bills of lading. *Held*, that the shipowner was still liable to the indorser of a bill of lading which did not contain an explicit statement exonerating him.—*Manchester Trust v. Furness, Withy and Co.*, L.R. [1895] 2 Q.B. 282; 64 L.J. Q.B. 549; 73 L.T. 110.
- (ii.) **C. A.**—*Collision—Compulsory Pilotage—Bristol.*—Decision of P. D. (see Vol. 20, p. 88, iv.) affirmed.—*The Charlton*, 73 L.T. 49.
- (iii.) **P. D.**—*Collision—Third Party—Indemnity.*—Defendants in a collision action *in rem* served a third-party notice upon the ship repairers under whose control, as they alleged, their ship was at the time of the collision. *Held*, that as there was no contract, express or implied, involving an indemnity, the third-party practice did not apply.—*The Jacob Christensen*, L.R. [1895] P. 281; 64 L.J. P. 92; 72 L.T. 902.
- (iv.) **P. D.**—*Co-ownership.*—A majority of co-owners have no power to change the ownership against the wish of the minority by forming themselves into a limited company, and in such a case the sale of the ship will be decreed in an action of restraint.—*The Hereward*, L.R. [1895] P. 284; 64 L.J. P. 87; 72 L.T. 903.
- (v.) **C. A.**—*Derelict—Recovery by Shipowner—Freight.*—If a ship is abandoned during a voyage, and the cargo owner exercises his right of treating this as a determination of the contract of affreightment, the subsequent recovery of the ship by its owner from salvors at the port of discharge will not revive the contract, and the cargo-owner will be entitled to have it delivered to him without payment of freight.—*The Arno*, 72 L.T. 621.
- (vi.) **Q. B. D.**—*Freight—Goods Damaged—Insurance of Profit—Average—Concealment.*—Goods which are no longer merchantable owing to sea damage are not liable for freight, the same being payable on right delivery. Where a charterer shipped goods at freights which together exceeded the chartered freight, and insured his profit, *held*, that there was a total loss when, owing to some of the goods being damaged, the freights received amounted to less than the chartered freight. The fact that the chartered freight was a lump sum and not a tonnage rate, *held*, to be one which the assured was not bound to disclose.—*Asfar and Co. v. Blundell*, L.R. [1895] 2 Q.B. 196; 64 L.J. Q.B. 573; 73 L.T. 30.
- (vii.) **P. D.**—*Insurance—Abandonment—Freight—Cash Advances.*—The plaintiffs insured a ship which was abandoned as a total loss, but the cargo was salvaged and delivered. They claimed the gross freight. *Held*, that the shipowners were entitled to deduct a sum advanced by the charterers for ship's disbursements at the port of loading under a clause in the charter-party, as being equivalent to a prepayment of freight; but that they were not entitled to deduct a sum for coals and expenses necessarily incurred by the master at an intermediate port, this disbursement not having been incurred for freight alone.—*The Red Sea*, L.R. [1895] P. 293; 64 L.J. P. 89.
- (viii.) **Commercial Court.**—*Insurance—Collision—"Piers."*—A reinsurance policy insured against loss by collision with (amongst other things) "piers or stages, or similar structures." A vessel was driven against a sloping bank formed of loose boulders to protect a breakwater. *Held*, that the loss came within the policy.—*Union Marine Insurance Co. v. Borwick*, L.R. [1895] 2 Q.B. 279.

- (i.) **C. A.**—*Insurance—Hull and Machinery—Warranted Uninsured—Honour Policies—Disbursements.*—Decision of Q. B. D. (see Vol. 20, p. 118, viii.) affirmed.—*Roddick v. Indemnity Mutual Marine Insurance Co.*, L.R. [1895] 2 Q.B. 386; 72 L.T. 860.
- (ii.) **C. A.**—*Harbour Authority—Liability of—Unsafe Berth.*—Decision of P. D. (see Vol. 20, p. 118, vi.) affirmed.—*The Burlington*, 72 L.T. 890.
- (iii.) **P. D.**—*Mortgage—Priority—Freight—Commission on Sale by Mortgagee.*—The principle that a first mortgagee whose mortgage is taken to cover future advances cannot claim in priority to a second mortgagee the benefit of advances made after notice of the second mortgage, applies to mortgages of ships. A mortgagor assigned his freight to first mortgagees to secure advances for disbursements. The mortgagees had notice of a second mortgage. They arrested the ship but did not take possession before freight was paid. *Held*, that they did not receive it under their mortgage but as assignees, and were entitled to hold it as against the second mortgagees. A commission charged by mortgagees as part of the expenses of sale of a ship was disallowed. A commission, in respect of such advances stipulated by letter was allowed, the letter being a good collateral agreement, which did not affect the right of redemption.—*The Benwell Tower*, 72 L.T. 664.
- (iv.) **P. D.**—*Salvage—Towing Agreement.*—The master of a disabled ship agreed with a passing steamship for half-an-hour's towage for a fixed sum. The hawser broke immediately after the completion of the agreed time, and the steamship refused to continue the towage. *Held*, that although no benefit had resulted from the services, the agreement had been duly carried out, that it was not manifestly unfair, and that the agreed sum must be paid.—*The Strathgarry*, 72 L.T. 900.
- (v.) **C. A.**—*Seaman—Contract of Service—Increased Danger—Voyage Uncompleted—Wages.*—Decision of Q. B. D. (see Vol. 20, p. 119, iv.) affirmed.—*O'Neill v. Armstrong*, L.R. [1895] 2 Q.B. 418.

### Solicitor:—

- (vi.) **Q. B. D.**—*Misconduct—Committee of Law Society—Discretion—Solicitors Act, 1888, ss. 13, 19.*—The committee of the Incorporated Law Society have a discretion to refuse to proceed on the matter of an application against a solicitor, if they consider that the affidavit of the applicant discloses no *prima facie* case of misconduct. The Court may, in its discretion, refuse a mandamus to compel the committee to hold a further enquiry, because the applicants can bring the alleged misconduct directly before the Court.—*Reg. v. Incorporated Law Society*, L.R. [1895] 2 Q.B. 456; 43 W.R. 687.
- (vii.) **P. C.**—*Negligence—Evidence—New Trial—Jamaica Civil Code.*—In an action against a solicitor for negligence in not taking the proofs of the witnesses before a trial, the witnesses may be called to prove what evidence they would have given; but as it appeared that such evidence, if given, could have had no legitimate effect on the verdict, *held*, in accordance with the Jamaica Civil Code, Art 428, that a new trial ought not to be ordered.—*Manley v. Palache*, 73 L.T. 98.
- (viii.) **Ch. D.**—*Order for Taxation—Recovery of Amount found Due.*—A solicitor obtained a common order for taxation of his costs in the Chancery Division, which contained no direction for payment by the client of the amount found due. *Held*, that payment of the amount found due could not be enforced by summons, but that an action must be brought for the purpose.—*In re Debenham and Walker*, L.R. [1895] 2 Ch. 430; 73 L.T. 115; 48 W.R. 699.

- (i.) **C. A.**—*Taxation—Scale Fee—Debenture Trust Deed.*—The costs of a debenture trust deed, which was intended to be a mortgage security for moneys advanced, but under which no debentures were actually issued, must be taxed under Rule 2 (c) of the General Order.—*In re Bircham & Co.*, 43 W.R. 673.

### Trade Mark:—

- (ii.) **C. A.**—*Invented Word—Registration—Patents, &c., Acts, 1883, s. 64; 1888, s. 10, sub-s. 1 (d), (e).*—Decision of Ch. D. (see Vol. 20, p. 91, ii.) affirmed.—*In re Densham's Trade Mark*, 64 L.J. Ch. 634; 72 L.T. 614.

### Tramways:—

- (iii.) **Ch. D.**—*Receiver—Non-repair of Rails—Penalty—Tramways Act, 1870, ss. 28, 56.*—An order for a receiver and manager of a tramway company was made in a debenture-holder's action. Subsequently an order was made by justices, at the instance of the county council, imposing a penalty, raisable by distress, for non-repair of the rails of the tramway. *Held*, that the county council ought to have leave to distrain on the company's goods, notwithstanding the appointment of the receiver and manager.—*Pegge v. Neath and District Tramways Co.*, L.R. [1895] 2 Ch. 508; 73 L.T. 25.

### Title:—

- (iv.) **C. A.**—*Legal Origin—Presumption.*—The plaintiff, as surviving trustee of parish lands, alleged that from the time of legal memory certain lands had been vested in the feoffees upon trust for the vestry, subject to a rent-charge, and that the defendants had been tenants of the vestry at a yearly rent since 1838, which tenancy had expired. *Held*, that a legal origin of title was not impossible, and that it ought to be presumed. *Held*, that the omission of the land from the feoffments of the parish before 1838 was not sufficient to rebut the inference which the Court was compelled to draw from the long possession.—*Elliot v. Mayor of Bristol*, 72 L.T. 752.

### Vendor and Purchaser:—

- (v.) **Ch. D.**—*Gavelkind—Enfeoffment by Infant—Consideration.*—Where a title to gavelkind land is derived from a conveyance and enfeoffment made by adults and infants, and the transaction shews on the face of it that the infants did not receive a proper proportion of the purchase money, a purchaser cannot be compelled to accept the title.—*In re Maskell and Goldfinch's Contract*, L.R. [1895] 2 Ch. 525; 64 L.J. Ch. 678; 72 L.T. 836; 43 W.R. 620.
- (vi.) **Ch. D.**—*Particulars—Plan—Part of Contract.*—Four lots were put up to auction, described as containing a depth of 98 feet each. The particulars stated that a right of way would be granted over the path at the back. A plan was annexed, the accuracy of which was not guaranteed, which shewed the four lots as extending from a road to the boundary of the vendor's property, with figures showing the depth as stated. A line was drawn across the lots four feet from the wall, but the space beyond the line was coloured with the rest of the lots. There was no actual existing path. The purchasers of the lots did not wish to have any right of way, and claimed conveyances of the whole depth of the lots as coloured. *Held*, that they were entitled to such conveyance without any reservation of a right of way.—*In re Lindsay and Foster's Contract*, 72 L.T. 832.

- (i.) **C. A.**—*Specific Performance—Bad Title—Conditions—Deposit.*—The plaintiff offered leaseholds for sale, with conditions which provided that no objection should be made as to the title between the date of an under-lease and the date of an assignment thereof, but should assume that such assignment vested in the assignee, a good title. The defendant, the purchaser, discovered that owing to a breach of trust, and the fraudulent concealment of a will during the period covered by the condition, the title offered was bad even as a holding title. *Held*, that the plaintiff was not entitled to specific performance, and that the defendant was not entitled to a return of the deposit he had paid. —*Scott v. Alvarez* (No. 2), 43 W.R. 694.

### Warranty:—

- (ii.) **H. L.**—*Given in Error—Damages—Right of Principal to Sue*—Decision of C. A. (*see* Vol. 20, p. 92, iii.) affirmed.—*Brown v. Law*, 72 L.T. 779.

### Waterworks:—

- (iii.) **H. L.**—*Public Road—Water-pipes—Compulsory Powers—Waterworks Clauses Act, 1847, ss. 28, 29.*—The railway company owned a girder-bridge which carried a public road across their line. There was not sufficient depth of earth on the bridge to receive a water-pipe. *Held*, that the appellants were not entitled to break through the abutments of the bridge and sling their water-pipe from the girders of the bridge. —*Lord Provost of Glasgow v. Glasgow and South Western Railway, L.R.* [1895] A.C. 376; 72 L.T. 809.

### Weights and Measures:—

- (iv.) **Q. B. D.**—*Instrument used for Trade—Weights and Measures Acts, 1878, s. 19; 1889, s. 1, sub-ss. 1, 2.*—A lead smelter used scales to verify the weight of the pigs of lead produced at his works. He kept an account of the weights, and the weights were specified in the invoices, though the purchasers were not bound to accept such weights. *Held*, that the scales were used for trade and ought to be stamped.—*Crick v. Theobald*, 64 L.J. M.C. 216; 72 L.T. 807.

### Will:—

- (v.) **C. D.**—*Administration with Will Annexed—Legacy to Convent.*—Testatrix bequeathed her residue to A. B. "to be disposed of as she shall think fit for the benefit of" a Roman Catholic convent. A. B. and the executor died before the testatrix. Administration with the will annexed was granted to the reverend mother of the convent as residuary legatee, on proof that the institution was permanent, and that the reverend mother had power to receive and apply the legacy. —*In the goods of M'Auliffe, L.R.* [1895] P. 290.
- (vi.) **P. D.**—*Administration with Will Annexed—Incapacity of Executor.*—Where the executor was incapacitated by illness, administration with the will annexed was granted to a residuary legatee for life for the use and benefit of the executor till his recovery.—*In the goods of Ponsonby, L.R.* [1895] P. 287.
- (vii.) **C. A.**—*Bequest upon Trusts declared by Reference to Trusts of Real Estate—Alteration by Codicil.*—Testator devised real estate in settlement, and bequeathed personality to be held upon such trusts as would best correspond with the trusts thereinbefore declared of the real

- estate. By codicil he altered the order of succession of the real estate. *Held*, that the personality must follow the order of succession as altered.—*Liddell v. Liddell*, 64 L.J. Ch. 674.
- (i.) **Ch. D.—Charity—Marshalling.**—Bequest of residuary personality to a charity, save and except such parts as could not by law be appropriated by will to charitable purposes. *Held*, that this did not amount to a direction to marshal assets in favour of the charity.—*Wegg-Prosser v. Wegg-Prosser*, L.R. [1895] 2 Ch. 449; 73 L.T. 58.
- (ii.) **Ch. D.—Construction—"Charity."**—Societies for the suppression and abolition of vivisection are charities within the legal definition of the word "charity."—*Cross v. London Anti-Vivisection Society*, L.R. [1895] 2 Ch. 501; 43 W.R. 661.
- (iii.) **Ch. D.—Construction—Issue Living—Child en ventre.**—Devise to A. for life, remainder to B. "for her absolute use and benefit in case she has issue living at the death" of A., "but in case she has no issue then living," then over. At A.'s death B. was en ventre, and a living child was afterwards born. *Held*, that B. took absolutely.—*Cleghorn v. Burrows*, L.R. [1895] 2 Ch. 497; 43 W.R. 683.
- (iv.) **Ch. D.—Construction—Children—Step-children.**—A testator had, at the date of his will, been married for thirteen years to a wife who had four children by a former husband, whom he treated in all respects as his own. He had no legitimate children. He bequeathed his property to his children, with a clause substituting the issue of any child dying in his lifetime leaving issue. He was then fifty-nine years old and his wife sixty. He had no children born after the will. *Held*, that the step-children took.—*Upton v. Jeans*, 72 L.T. 835.
- (v.) **C. A.—Construction—Precatory Trust.**—Decision of Ch. D. (see Vol. 20, p. 93, ii.) affirmed.—*Trench v. Hamilton*, L.R. [1895] 2 Ch. 370; 72 L.T. 748; 43 W.R. 577.
- (vi.) **Ch. D.—Construction—Charitable Bequest—Perpetuity.**—A testator gave a legacy to trustees upon trust out of the income to purchase annually a cup to be given to the most successful yacht of the season, declaring that his object was to encourage yacht-racing. *Held*, that the gift was not charitable, and was void for perpetuity.—*Jones v. Palmer*, 72 L.T. 795.
- (vii.) **C. A.—Construction—Successive Limitations—Personal Estate—Lapse.**—Testator was entitled (subject to a life estate) to a moiety of the proceeds of sale of an estate under a trust for sale. He devised the estate (reciting that he was entitled to it under the settlement) together with land of his own to trustees to the use of H. for life, remainder to trustees to preserve, remainder to the use of first and other sons of H. in tail male, remainder to the use of first and other sons of E. in tail male, remainder to the use of first and other sons of M. in tail male, remainder to the use of first and other sons of F. in tail male. H. survived and died a bachelor. M. survived and died unmarried. E., a lady, was alive and unmarried, but upwards of seventy years old. F. had two sons, the elder of whom died before the testator. *Held* (1), that the testator's moiety of the proceeds of sale passed under the devise; (2) that there was no lapse by the death of the elder son of F., and that F.'s second son took the proceeds of sale absolutely subject to E. having a son; (3) that the gift to such second son was not void under the rule against perpetuities, because the gift must vest, if at all, in the lifetime of a person living at the death of the testator; and (4) that, E. being past child-bearing, the second son of F. was entitled to the intermediate income from the death of the tenant for life.—*Devenish v. Pester*, L.R. [1895] 2 Ch. 848; 64 L.J. Ch. 567; 72 L.T. 816.

(1.) **Ch. D.**—*Codicil—Direction to Sell Land Specifically Devise*—Devise by will of estate at W. to F. for life, and after his death to his eldest son. If he should die under twenty-seven, without issue, the testator directed his executors to sell the estate. A., B. and C. were appointed executors. By a codicil the testator appointed A. and B. executors, revoked previous appointments, and directed his executors to sell the estate at W. *Held*, that the codicil did not deprive F. and his son of the beneficial interests given them by the will.—*Chiffel v. Wilson*, 73 L.T. 53.

(11) **P. D.**—*Erection—Attesting Witness*—A testator signed his will before one witness, who attested it in his presence. The second attesting witness having arrived the testator acknowledged his signature, and the first witness, in the presence of the testator and the second witness, traced over his signature with a dry pen. *Held*, that the will was not duly attested.—*Horne v. Featherstone*, 73 L.T. 32

*See Deed*, p. 9. 1.









